

1 LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
2 SHAWN A. WILLIAMS (213113)
MONIQUE C. WINKLER (213031)
3 AELISH M. BAIG (201279)
100 Pine Street, Suite 2600
4 San Francisco, CA 94111
Telephone: 415/288-4545
5 415/288-4534 (fax)
shawnw@lerachlaw.com
6 moniquew@lerachlaw.com
aelishb@lerachlaw.com

7 BARRACK, RODOS & BACINE
8 STEPHEN R. BASSER (121590)
JOHN L. HAEUSSLER (215044)
9 402 West Broadway, Suite 850
San Diego, CA 92101
10 Telephone: 619/230-0800
619/230-1874 (fax)
11 sbasser@barrack.com
jhaeuessler@barrack.com

12 Co-Lead Counsel for Plaintiffs

13 [Additional counsel appear on signature page.]

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

17 In re NVIDIA CORP. DERIVATIVE)	Master File No. C-06-06110-SBA
18 LITIGATION)	
19 _____)	CONSOLIDATED VERIFIED
20 This Document Relates To:)	SHAREHOLDERS DERIVATIVE
)	COMPLAINT
21 ALL ACTIONS.)	
_____)	<u>DEMAND FOR JURY TRIAL</u>

NATURE OF THE ACTION

1
2 1. This is a shareholders derivative action on behalf of nominal defendant NVIDIA
3 Corporation (“NVIDIA” or the “Company”) against its entire Board of Directors and certain current
4 and former top officers (collectively, “defendants”) for violations of federal and state law, including
5 breaches of fiduciary duty, abuse of control, corporate waste, unjust enrichment and gross
6 mismanagement. Beginning when NVIDIA became a public company in 1999, certain current and
7 former executives engaged in a secret scheme to grant undisclosed, in-the-money stock options to
8 themselves and others by backdating stock option grants to coincide with historically low prices for
9 NVIDIA’s common stock and falsifying the Company’s financial statements.

10 2. As Securities and Exchange Commission (“SEC”) Chairman Christopher Cox
11 testified before the U.S. Senate Committee on Banking, Housing and Urban Affairs on September 6,
12 2006, “backdating” is a practice by which a stock option is publicly reported as having been granted
13 on one date, but is actually backdated weeks or months to a date where the stock price was trading at
14 a lower price. Such backdating allows company executives and stock option grantees to realize
15 immediate unearned and undisclosed financial gains at the expense of the company and its
16 shareholders. Lynn Turner, the SEC’s former Chief Accountant, described backdating as follows:
17 “It’s like allowing people to place bets on a horse race after the horses have crossed the finish line.”
18 Arthur Levitt, former Chairman of the SEC, described backdating as stealing: “It is ripping off
19 shareholders in an unconscionable way” and “represents the ultimate in greed.”

20 3. By engaging in the backdating scheme, defendants were able to conceal that NVIDIA
21 was not recording material compensation expenses and was materially overstating the Company’s
22 net income and earnings per share. Defendants collectively realized \$358.8 million in illicit
23 compensation by selling shares of NVIDIA stock (which was artificially inflated), frequently
24 through the exercise and sale of manipulated stock options.

25 4. Moreover, each of the defendants knowingly violated the terms of NVIDIA’s stock
26 option plans by granting and/or receiving options at below fair market value prices, and participated
27 in the concealment of the backdating option scheme by making false statements in NVIDIA’s annual
28 reports and proxy statements about the administration of NVIDIA’s stock options and stock option

1 granting practices. Defendants also have refused to take advantage of the Company's legal rights to
2 require these insiders to fully disgorge the illicitly-obtained incentive compensation and proceeds
3 diverted to them since 1999.

4 INTRODUCTION

5 5. In recent months, over 100 companies have come under scrutiny for their stock option
6 granting practices. On March 18, 2006, an article appeared in the *Wall Street Journal* entitled, "The
7 Perfect Payday – Some CEOs reap millions by landing stock options when they are most valuable;
8 Luck – or something else?" The *Wall Street Journal's* analysis focused on financial filings from
9 several high-tech companies and was an extension of recent academic articles which suggested that
10 "backdating [stock options] was widespread, particularly from the start of the tech-stock boom in the
11 1990s though the Sarbanes-Oxley corporate reform act of 2002." While NVIDIA was not directly
12 implicated in the option-timing scandal at that point, that was soon to change.

13 6. On August 10, 2006, NVIDIA was forced to admit that stock options had been
14 manipulated. In announcing that the Company may restate its reported financial results for previous
15 years, NVIDIA stated that the Audit Committee of the Board of Directors "has reached a preliminary
16 conclusion that incorrect measurement dates were used for financial accounting purposes for stock
17 option grants in certain prior periods" – *i.e.*, that stock options did **not** carry an exercise price at fair
18 market value as of the date of the grant. As a result, "NVIDIA may record additional non-cash
19 stock-based compensation expense related to stock option grants."

20 7. Following this announcement, the situation at NVIDIA quickly deteriorated. On
21 September 11, 2006, NVIDIA received a request from the SEC "that the Company provide them
22 with certain information relating to the Company's historical stock option practices." NVIDIA also
23 disclosed that it would not file its quarterly report on Form 10-Q due to the ongoing stock option
24 probes. Then, on September 12, 2006, NVIDIA announced that it has received a letter from the
25 Nasdaq stock market threatening NVIDIA with delisting of its common stock if the Company did
26 not file its second quarter 2007 Form 10-Q in a timely fashion.

27 8. Finally, on November 1, 2006, NVIDIA announced the final results of its internal
28 stock options investigation. The Company disclosed that it will restate its previously-issued

1 financial statements for the fiscal years 2004 through 2006, together with selected financial
 2 statements for earlier years, and for the first quarter of fiscal year 2007, to correct material errors
 3 related to accounting for stock-based compensation expense.

4 NVIDIA Corporation today announced that it expects to restate its previously-issued
 5 financial statements for the *fiscal years 2004 through 2006*, together with selected
 6 financial statements for earlier years, and for the first quarter of fiscal 2007 that
 ended April 30, 2006 to *correct errors related to accounting for stock-based
 compensation expense*.

7 The Company currently estimates . . . that the net impact of the restatement
 8 will be aggregate non-cash charges of *less than \$150 million* for stock-based
 compensation expense, net of related tax effects.

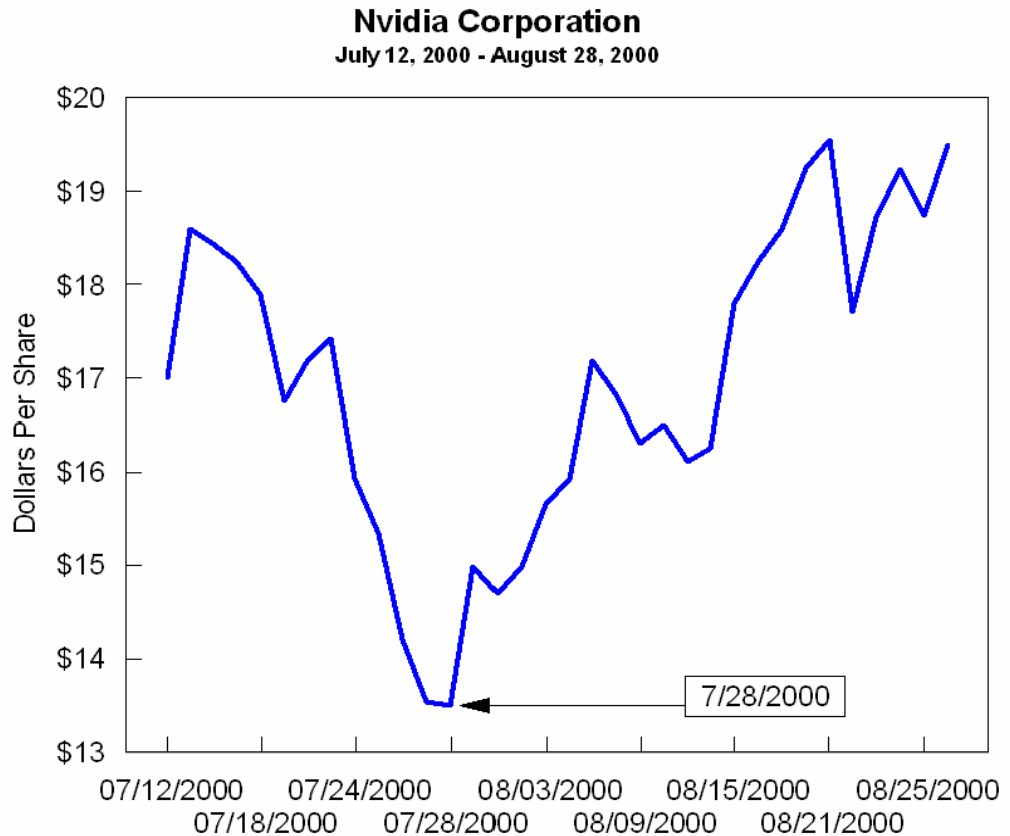
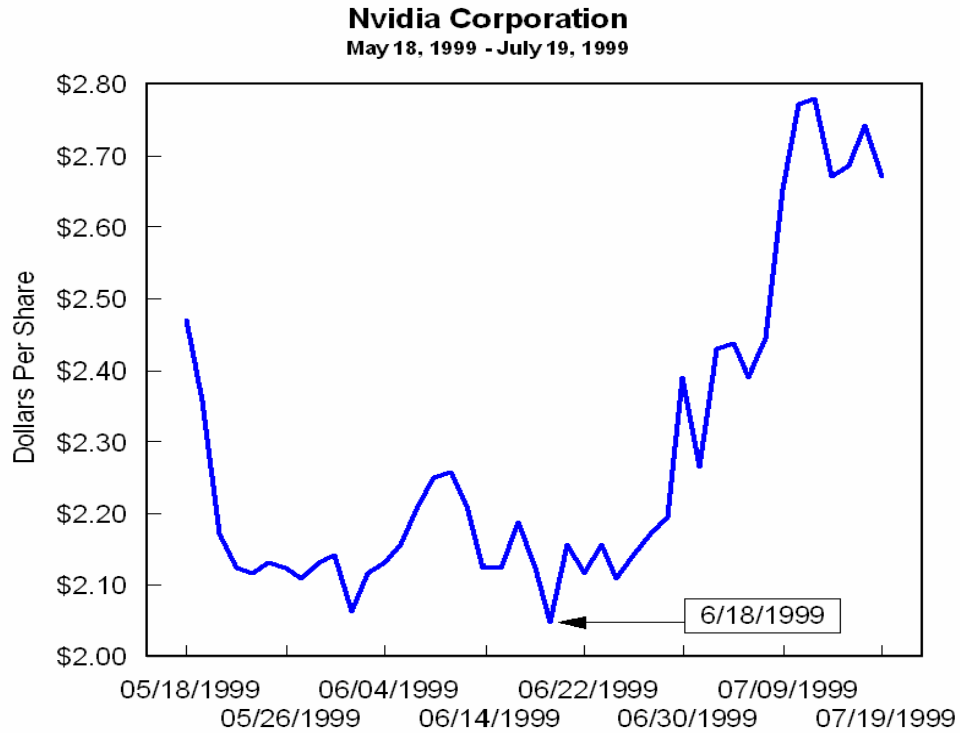
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10 The Audit Committee has reached a preliminary conclusion, based upon the
 11 recommendation of management, *that NVIDIA will need to restate its historical
 financial statements to record additional non-cash stock-based compensation
 12 expense related to stock option grants* as a result of errors in recording the
 13 measurement date for certain stock option grants. Accordingly, the Company
 advises that all of the Company's financial statements and related communications
 for periods commencing on or after January 31, 1999 should not be relied upon.

14 9. Shortly thereafter, on November 29, 2006, NVIDIA filed its restated Form 10-K with
 15 the SEC, in which NVIDIA restated its financial statements for the fiscal years 2004 through 2006,
 16 together with selected financial statements for earlier years, and for the first quarter of fiscal year
 17 2007. According to the Company, on a "number of occasions" the "measurement date used for
 18 financial accounting and reporting purposes for stock options granted to certain of our employees
 19 was different from the actual grant date." NVIDIA also disclosed that, as a result of the options
 20 scheme, the Company has recorded a stock-based compensation charge of *\$190.2 million – nearly
 21 \$41 million more than the amount originally disclosed*.

22 10. Because NVIDIA is only obligated to disclose option grants to certain executive
 23 officers in its proxy filings, the full breadth of unlawful stock options and false financial reporting
 24 scheme is not yet known. However, a number of option grants to NVIDIA executives between 1999
 25 and 2002 came at monthly and/or quarterly lows in NVIDIA's stock price. The odds of that
 26 happening by chance are extraordinarily remote.

27 11. Two of the most egregious backdated stock option grants to defendants are detailed
 28 below:



12. Defendants' backdating scheme not only surreptitiously and illegally lined defendants' pockets and caused NVIDIA to issue materially false financial statements, but undermined the key purpose of stock option-based executive compensation, *i.e.*, to provide incentive to improve the Company's performance and increase the Company's stock price and market capitalization. By manipulating options such that they carried a strike price lower than the trading price of the stock on the date of grant, NVIDIA insiders profited immediately upon the award of the options without doing anything to improve the Company's business or financial condition – a situation which President George W. Bush recently declared “*bad for America.*”

13. The United States Senate has also decried the greed and exploitation of shareholders, including Senator Chuck Grassley who stated with regard to stock options backdating:

It is behavior that, to put it bluntly, is disgusting and repulsive. It is behavior that ignores the concept of an “honest day's work for an honest day's pay” and replaces it with a phrase that we hear all too often today, “I'm going to get mine.” Even worse in this situation, most of the perpetrators had already gotten “theirs” in the form of six- and seven-figure compensation packages of which most working Americans can only dream. But apparently that was not enough for some.

Instead, *shareholders and rank-and-file employees were ripped off by senior executives who rigged stock option programs – through a process called “back-dating”* – to further enrich themselves. And as we have found far too often in corporate scandals of recent years, boards of directors were either asleep at the switch, or in some cases, willing accomplices themselves.

14. By this action, plaintiffs seek to remedy the substantial damage and injuries inflicted upon NVIDIA by defendants' secret backdating scheme. By approving backdated grants to NVIDIA's executives and employees, the NVIDIA Board of Directors: (i) diverted hundreds of millions of dollars of corporate assets to top NVIDIA insiders; (ii) caused NVIDIA to materially understate its compensation expenses and materially overstate its net income or materially understate its net loss, exposing NVIDIA to potential liability for violations of the securities laws; (iii) subjected NVIDIA to substantial investigative costs and massive potential liability from regulators, including the SEC and the Internal Revenue Service (“IRS”); (iv) damaged NVIDIA's credibility with shareholders and business partners alike; (v) subjected NVIDIA to more than \$190.2 million in charges for stock option compensation expense, and possible payments of back taxes, fines and

1 penalties as the IRS may impose; and (vi) exposed NVIDIA to possible delisting by the Nasdaq
2 stock market.

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction over this action pursuant to §§10(b) and 14(a) of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§78j(b) and 78n(a), and Rule 10b-5,
6 17 C.F.R. §240.10b-5, promulgated thereunder. Defendants, directly or indirectly, used the means
7 and instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities
8 exchange in connection with the acts, transactions, practices and course of business alleged herein.
9 This Court also has supplemental jurisdiction over the state law claims in this action pursuant to 28
10 U.S.C. §1367. This action is not a collusive one to confer jurisdiction on a court of the United States
11 which it would not otherwise have.

12 16. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C.
13 §78aa, as well as 28 U.S.C. §1391(b). Many of the acts charged herein, including the preparation
14 and dissemination of materially false and misleading information, occurred in substantial part in this
15 District. NVIDIA is located in and conducts its business in this District. Further, defendants
16 conduct business in this District, and certain of the defendants are citizens of California and reside in
17 this District.

18 **PARTIES**

19 17. Lead Plaintiff LIUNA Staff & Affiliates Pension Fund is a shareholder of NVIDIA
20 and has owned NVIDIA stock at all times relevant to this action.

21 18. Lead Plaintiff Alaska Electrical Pension Fund is a shareholder of NVIDIA and has
22 owned NVIDIA stock at all times relevant to this action.

23 19. Nominal defendant NVIDIA is a Delaware corporation with its principal executive
24 offices located at 2701 San Tomas Expressway, Santa Clara, California 95050. NVIDIA is a leading
25 provider of programmable graphics processor technologies for use in computers, consumer
26 electronics and mobile devices.

27 20. Defendant Jen-Hsun Huang (“Huang”) co-founded NVIDIA in April 1993 and has
28 served as Chairman, President and Chief Executive Officer (“CEO”) since that time. As a member

1 of the Board of Directors and an executive of NVIDIA, Huang granted, received and/or concealed
2 the backdated stock options at issue in this case by making false statements in NVIDIA's proxy
3 statements and SEC reports that options grants made to executives were made at fair market value on
4 the date of grant when, in fact, they were not. Defendant Huang assisted in the preparation of
5 NVIDIA's annual and quarterly reports issued since April 1993. He also reviewed, approved and
6 helped to prepare each proxy statement NVIDIA issued since April 1993. Defendant Huang signed
7 NVIDIA's financial reports for 2000-2003, as well as those for 2004-2006 which now must be
8 restated to correct the accounting irregularities caused by the secret backdating scheme. Defendant
9 Huang received backdated options worth millions and therefore financially benefited from the
10 backdating scheme. He also sold 5.3 million shares of NVIDIA stock for unlawful insider proceeds
11 of \$99.4 million in violation of California Corporations Code §§25402 and 24502.5 and other
12 securities laws.

13 21. Defendant Tench Coxe ("Coxe") has served as a Director of NVIDIA since June
14 1993. As a member of the Board of Directors of NVIDIA and its Compensation Committee, Coxe
15 granted, received and/or concealed the backdated stock options at issue in this case by making false
16 statements in NVIDIA's proxy statements and SEC reports that options grants made to executives
17 were made at fair market value on the date of grant when, in fact, they were not. Defendant Coxe
18 assisted in the preparation of NVIDIA's annual and quarterly reports issued since June 1993. He
19 also reviewed, approved and helped to prepare each proxy statement NVIDIA issued since June
20 1993. Defendant Coxe signed NVIDIA's financial reports for 2000-2003, as well as those for 2004-
21 2006 which now must be restated to correct the accounting irregularities caused by the secret
22 backdating scheme. Defendant Coxe received backdated options worth millions and therefore
23 financially benefited from the backdating scheme. He also sold 520,000 shares of NVIDIA stock for
24 unlawful insider trading proceeds of \$12 million in violation of California Corporations Code
25 §§25402 and 24502.5.

26 22. Defendant James C. Gaither ("Gaither") has served as a Director of NVIDIA since
27 December 1998. As a member of the Board of Directors of NVIDIA and its Compensation
28 Committee, Gaither granted, received and/or concealed the backdated stock options at issue in this

1 case by making false statements in NVIDIA's proxy statements and SEC reports that options grants
2 made to executives were made at fair market value on the date of grant when, in fact, they were not.
3 Defendant Gaither assisted in the preparation of NVIDIA's annual and quarterly reports issued since
4 December 1998. He also reviewed, approved and helped to prepare each proxy statement NVIDIA
5 issued since December 1998. Defendant Gaither signed NVIDIA's financial reports for 1999-2003,
6 as well as those for 2004-2006 which now must be restated to correct the accounting irregularities
7 caused by the secret backdating scheme. Defendant Gaither received backdated options worth
8 millions and therefore financially benefited from the backdating scheme. He also sold 609,608
9 shares of NVIDIA stock for unlawful insider trading proceeds of \$6.2 million in violation of
10 California Corporations Code §§25402 and 24502.5 and other securities laws.

11 23. Defendant Harvey C. Jones, Jr. ("Jones") has served as a Director of NVIDIA since
12 November 1993. As a member of the Board of Directors of NVIDIA and its Compensation
13 Committee, Jones granted, received and/or concealed the backdated stock options at issue in this
14 case by making false statements in NVIDIA's proxy statements and SEC reports that options grants
15 made to executives were made at fair market value on the date of grant when, in fact, they were not.
16 Defendant Jones assisted in the preparation of NVIDIA's annual and quarterly reports issued since
17 November 1993. He also reviewed, approved and helped to prepare each proxy statement NVIDIA
18 issued since November 1993. Defendant Jones signed NVIDIA's financial reports for 1999-2003, as
19 well as those for 2004-2006 which now must be restated to correct the accounting irregularities
20 caused by the secret backdating scheme. Defendant Jones received backdated options worth
21 millions and therefore financially benefited from the backdating scheme. He also sold 1.1 million
22 shares of NVIDIA stock for unlawful insider trading proceeds of \$19.5 million in violation of
23 California Corporations Code §§25402 and 24502.5 and other securities laws.

24 24. Defendant William J. Miller ("Miller") has served as a Director of the Company since
25 November 1994. As a member of the Board of Directors of NVIDIA and its Audit Committee,
26 Miller granted, received and/or concealed the backdated stock options at issue in this case by making
27 false statements in NVIDIA's proxy statements and SEC reports that options grants made to
28 executives were made at fair market value on the date of grant when, in fact, they were not.

1 Defendant Miller assisted in the preparation of NVIDIA's annual and quarterly reports issued since
2 November 1994. He also reviewed, approved and helped to prepare each proxy statement NVIDIA
3 issued since November 1994. Defendant Miller signed NVIDIA's financial reports for 1999-2003,
4 as well as those for 2004-2006 which now must be restated to correct the accounting irregularities
5 caused by the secret backdating scheme. Defendant Miller received backdated options worth
6 millions and therefore financially benefited from the backdating scheme. He also sold 1.6 million
7 shares of NVIDIA stock for unlawful insider trading proceeds of \$31.3 million in violation of
8 California Corporations Code §§25402 and 24502.5 and other securities laws.

9 25. Defendant Mark L. Perry ("Perry") has served as a Director of the Company since
10 May 2005. As a member of the Board of Directors of NVIDIA and its Audit Committee, Perry
11 concealed the backdated stock options at issue in this case by making false statements in NVIDIA's
12 proxy statements and SEC reports that options grants made to executives were made at fair market
13 value on the date of grant when, in fact, they were not. Defendant Perry assisted in the preparation
14 of NVIDIA's annual and quarterly reports issued since May 2005. He also reviewed, approved and
15 helped to prepare each proxy statement NVIDIA issued since May 2005. Defendant Perry signed
16 NVIDIA's financial reports for 2006, which now must be restated to correct the accounting
17 irregularities caused by the secret backdating scheme.

18 26. Defendant A. Brooke Seawell ("Seawell") has served as a Director of NVIDIA since
19 December 1997. As a member of the Board of Directors of NVIDIA and its Audit Committee,
20 Seawall granted, received and/or concealed the backdated stock options at issue in this case by
21 making false statements in NVIDIA's proxy statements and SEC reports that options grants made to
22 executives were made at fair market value on the date of grant when, in fact, they were not.
23 Defendant Seawall assisted in the preparation of NVIDIA's annual and quarterly reports issued since
24 December 1997. He also reviewed, approved and helped to prepare each proxy statement NVIDIA
25 issued since December 1997. Defendant Seawall signed NVIDIA's financial reports for 1999-2003,
26 as well as those for 2004-2006 which now must be restated to correct the accounting irregularities
27 caused by the secret backdating scheme. Defendant Seawall received backdated options worth
28 millions and therefore financially benefited from the backdating scheme. He also sold 476,400

1 shares of NVIDIA stock for unlawful insider trading proceeds of \$9.8 million in violation of
2 California Corporations Code §§25402 and 24502.5 and other securities laws.

3 27. Defendant Steven Chu (“Chu”) has served as a Director of NVIDIA since July 2004.
4 As a member of the Board of Directors of NVIDIA, Chu granted, received and/or concealed the
5 backdated stock options at issue in this case by making false statements in NVIDIA’s proxy
6 statements and SEC reports that options grants made to executives were made at fair market value on
7 the date of grant when, in fact, they were not. Defendant Chu assisted in the preparation of
8 NVIDIA’s annual and quarterly reports issued since July 2004. He also reviewed, approved and
9 helped to prepare each proxy statement NVIDIA issued since July 2004. Defendant Chu signed
10 NVIDIA’s financial reports for 2005-2006 which now must be restated to correct the accounting
11 irregularities caused by the secret backdating scheme.

12 28. Defendant Mark A. Stevens (“Stevens”) served as a Director of NVIDIA from 1993
13 until June 2006. As a member of the Board of Directors of NVIDIA and its Audit Committee,
14 Stevens granted, received and/or concealed the backdated stock options at issue in this case by
15 making false statements in NVIDIA’s proxy statements and SEC reports that options grants made to
16 executives were made at fair market value on the date of grant when, in fact, they were not.
17 Defendant Stevens assisted in the preparation of NVIDIA’s annual and quarterly reports issued
18 between 1993-June 2006. He also reviewed, approved and helped to prepare each proxy statement
19 NVIDIA issued between 1993-June 2006. Defendant Stevens signed NVIDIA’s financial reports for
20 2000-2003, as well as those for 2004-2005 which now must be restated to correct the accounting
21 irregularities caused by the secret backdating scheme. Defendant Stevens received backdated
22 options worth millions and therefore financially benefited from the backdating scheme. He also sold
23 2.4 million shares of NVIDIA stock for unlawful insider trading proceeds of \$23.4 million in
24 violation of California Corporations Code §§25402 and 24502.5 and other securities laws.

25 29. Defendant Christine B. Hoberg (“Hoberg”) previously served as NVIDIA’s Chief
26 Financial Officer (“CFO”) from December 1998 until July 2002. As an executive of NVIDIA,
27 Hoberg received and/or concealed the backdated stock options at issue in this case by making false
28 statements in NVIDIA’s proxy statements and SEC reports that options grants made to executives

1 were made at fair market value on the date of grant when, in fact, they were not. Defendant Hoberg
2 assisted in the preparation of NVIDIA's annual and quarterly reports issued between December
3 1998-July 2002. She also reviewed, approved and helped to prepare each proxy statement NVIDIA
4 issued since between December 1998-July 2002. Defendant Hoberg signed NVIDIA's financial
5 reports for 1999-2001 which now must be restated to correct the accounting irregularities caused by
6 the secret backdating scheme. Defendant Hoberg received backdated options worth millions and
7 therefore financially benefited from the backdating scheme. She also sold 1.4 million shares of
8 NVIDIA stock for unlawful insider trading proceeds of \$18.8 million in violation of California
9 Corporations Code §§25402 and 24502.5 and other securities laws.

10 30. Defendant Mary Dotz ("Dotz") previously served as NVIDIA's CFO on an interim
11 basis from April 2002 until September 2002. As an executive of NVIDIA, Dotz received and/or
12 concealed the backdated stock options at issue in this case by making false statements in NVIDIA's
13 proxy statements and SEC reports that options grants made to executives were made at fair market
14 value on the date of grant when, in fact, they were not. Defendant Dotz assisted in the preparation of
15 NVIDIA's annual and quarterly reports issued between April 2002-September 2002. She also
16 reviewed, approved and helped to prepare each proxy statement NVIDIA issued between April
17 2002-September 2002. Defendant Dotz helped prepare NVIDIA's financial reports which now must
18 be restated to correct the accounting irregularities caused by the secret backdating scheme.
19 Defendant Dotz received backdated options worth millions and therefore financially benefited from
20 the backdating scheme.

21 31. Defendant Marvin D. Burkett ("Burkett") has served as the Company's CFO since
22 September 2002. As an executive of NVIDIA, Burkett received and/or concealed the backdated
23 stock options at issue in this case by making false statements in NVIDIA's proxy statements and
24 SEC reports that options grants made to executives were made at fair market value on the date of
25 grant when, in fact, they were not. Defendant Burkett assisted in the preparation of NVIDIA's
26 annual and quarterly reports issued since September 2002. He also reviewed, approved and helped
27 to prepare each proxy statement NVIDIA issued since September 2002. Defendant Burkett helped
28 prepare NVIDIA's financial reports for 2002-2003, as well as those for 2004-2006 which now must

1 be restated to correct the accounting irregularities caused by the secret backdating scheme.
2 Defendant Burkett received backdated options worth millions and therefore financially benefited
3 from the backdating scheme.

4 32. Defendant Jeffrey D. Fisher ("Fisher") joined NVIDIA in July 1994 and currently
5 serves as the Company's Senior Vice President, GPU Business Unit. As an executive of NVIDIA,
6 Fisher received and/or concealed the backdated stock options at issue in this case by making false
7 statements in NVIDIA's proxy statements and SEC reports that options grants made to executives
8 were made at fair market value on the date of grant when, in fact, they were not. Defendant Fisher
9 assisted in the preparation of NVIDIA's annual and quarterly reports issued since July 1994. He also
10 reviewed, approved and helped to prepare each proxy statement NVIDIA issued since July 1994.
11 Defendant Fisher helped prepare NVIDIA's financial reports for 1999-2003, as well as those for
12 2004-2006 which now must be restated to correct the accounting irregularities caused by the secret
13 backdating scheme. Defendant Fischer received backdated options worth millions and therefore
14 financially benefited from the backdating scheme. He also sold 3 million shares of NVIDIA stock
15 for unlawful insider trading proceeds of \$45 million in violation of California Corporations Code
16 §§25402 and 24502.5 and other securities laws.

17 33. Defendant Chris A. Malachowsky ("Malachowsky") co-founded NVIDIA in April
18 1993 and currently serves as the Company's Senior Vice President, Engineering and Operations. As
19 an executive of NVIDIA, Malachowsky granted, received and/or concealed the backdated stock
20 options at issue in this case by making false statements in NVIDIA's proxy statements and SEC
21 reports that options grants made to executives were made at fair market value on the date of grant
22 when, in fact, they were not. Defendant Malachowsky assisted in the preparation of NVIDIA's
23 annual and quarterly reports issued since April 1993. He also reviewed, approved and helped to
24 prepare each proxy statement NVIDIA issued since April 1993. Defendant Malachowsky helped
25 prepare NVIDIA's financial reports for 1999-2003, as well as those for 2004-2006 which now must
26 be restated to correct the accounting irregularities caused by the secret backdating scheme.
27 Defendant Malachowsky received backdated options worth millions and therefore financially
28 benefited from the backdating scheme. He also sold 5.2 million shares of NVIDIA stock for

1 unlawful insider trading proceeds of \$63 million in violation of California Corporations Code
2 §§25402 and 24502.5 and other securities laws.

3 34. Defendant Daniel F. Vivoli (“Vivoli”) joined NVIDIA as Vice President of Product
4 Marketing in 1997 and currently serves as the Company’s Senior Vice President of Marketing. As
5 an executive of NVIDIA, Vivoli received and/or concealed the backdated stock options at issue in
6 this case by making false statements in NVIDIA’s proxy statements and SEC reports that options
7 grants made to executives were made at fair market value on the date of grant when, in fact, they
8 were not. Defendant Vivoli assisted in the preparation of NVIDIA’s annual and quarterly reports
9 issued since 1997. He also reviewed, approved and helped to prepare each proxy statement NVIDIA
10 issued since 1997. Defendant Vivoli helped prepare NVIDIA’s financial reports for 1999-2003, as
11 well as those for 2004-2006 which now must be restated to correct the accounting irregularities
12 caused by the secret backdating scheme. Defendant Vivoli received backdated options worth
13 millions and therefore financially benefited from the backdating scheme. He also sold 475,256
14 shares of NVIDIA stock for unlawful insider trading proceeds of \$6.1 million in violation of
15 California Corporations Code §§25402 and 24502.5 and other securities laws.

16 35. Defendant David M. Shannon (“Shannon”) has served as NVIDIA’s General Counsel
17 since August 2002. As an executive of NVIDIA, Shannon received and/or concealed the backdated
18 stock options at issue in this case by making false statements in NVIDIA’s proxy statements and
19 SEC reports that options grants made to executives were made at fair market value on the date of
20 grant when, in fact, they were not. Defendant Shannon assisted in the preparation of NVIDIA’s
21 annual and quarterly reports issued since August 2002. He also reviewed, approved and helped to
22 prepare each proxy statement NVIDIA issued since August 2002. Defendant Shannon helped
23 prepare NVIDIA’s financial reports for 2002-2003, as well as those for 2004-2006 which now must
24 be restated to correct the accounting irregularities caused by the secret backdating scheme.
25 Defendant Shannon received backdated options worth millions and therefore financially benefited
26 from the backdating scheme.

27 36. Defendant Curtis R. Priem (“Priem”) co-founded NVIDIA in April 1993 and
28 previously served as the Company’s Chief Technical Officer until 2003. As a co-founder and

1 executive of NVIDIA, Priem granted, received and/or concealed the backdated stock options at issue
2 in this case by making false statements in NVIDIA's proxy statements and SEC reports that options
3 grants made to executives were made at fair market value on the date of grant when, in fact, they
4 were not. Defendant Priem assisted in the preparation of NVIDIA's annual and quarterly reports
5 issued between April 1993 and 2003. He also reviewed, approved and helped to prepare each proxy
6 statement NVIDIA issued between April 1993 and 2003. Defendant Priem helped prepare
7 NVIDIA's financial reports for 1999-2003, which now must be restated to correct the accounting
8 irregularities caused by the secret backdating scheme. Defendant Priem received backdated options
9 worth millions and therefore financially benefited from the backdating scheme. He also sold
10 600,000 shares of NVIDIA stock for unlawful insider trading proceeds of \$3.9 million in violation of
11 California Corporations Code §§25402 and 24502.5 and other securities laws.

12 **THE FIDUCIARY DUTIES OF NVIDIA'S DIRECTORS AND OFFICERS**

13 37. As NVIDIA's directors and officers, defendants owed NVIDIA fiduciary duties,
14 including duties of good faith, fair dealing, honesty and loyalty, in the performance of their
15 responsibilities with respect to the management and administration of the affairs of NVIDIA, as well
16 as the duty of full and candid disclosure of all material facts related thereto.

17 38. In addition, defendants owed to NVIDIA the duty to ensure that its shareholder
18 reports about the Company and its business and finances were accurate, complete and truthful and
19 not in any way false and/or materially misleading. The conduct of NVIDIA's executives who
20 engaged in unlawful insider trading in violation of the securities laws, as well as their fiduciary
21 duties of good faith and loyalty, has been ratified by NVIDIA's Board of Directors, which failed to
22 take action against them.

23 39. To discharge their duties, defendants were required to exercise good faith and
24 reasonable diligence in the supervision of NVIDIA's business and financial affairs. By virtue of
25 these obligations, defendants were required, among other things:

26 (a) to manage, conduct, supervise, and direct the business and affairs of NVIDIA
27 in good faith in accordance with state and federal laws and regulations and the Articles of
28 Incorporation and By-Laws of NVIDIA;

1 (b) to exercise reasonable control and supervision over the officers and employees
2 of NVIDIA;

3 (c) to exercise good faith in evaluation of the prudence and soundness of policies
4 and practices proposed to be undertaken by NVIDIA;

5 (d) to ensure that NVIDIA did not engage in unsafe, imprudent, or unsound
6 practices and that NVIDIA complied with all applicable laws and regulations;

7 (e) to establish guidelines and policies adequately governing the structure and
8 organization of the Company's operations;

9 (f) to establish guidelines and policies adequately governing NVIDIA's stock
10 option accounting and stock option granting practices;

11 (g) to maintain a proper division of authority and responsibility among the
12 officers and directors of NVIDIA so as to prevent the dominance of any officer or director in the
13 conduct of the business and affairs of NVIDIA;

14 (h) to ensure that NVIDIA did not engage in unsafe, imprudent, or unsound
15 practices and to become and remain informed as to how NVIDIA was, in fact, operating;

16 (i) to maintain and implement an adequate and functioning system of internal
17 financial and accounting controls, such that NVIDIA's assets would be safeguarded, its financial
18 statements and information would be accurately recorded and reported, and corporate managers
19 would be given prompt notice of serious problems or divergences so that risk to the corporation
20 would be minimized; and

21 (j) to supervise the preparation and filing of financial results and financial
22 statements required by law from NVIDIA, including the Company's SEC reports, and to examine
23 and evaluate any reports of examination, audits or other information required by law concerning the
24 financial condition of NVIDIA and to make full and accurate disclosure of all material facts
25 concerning, among other things, each of the subjects and duties set forth above.

26 40. At all relevant times, defendants occupied positions with NVIDIA or were associated
27 with the Company in such a manner as to make them privy to confidential proprietary information
28 concerning NVIDIA's business and finances, as well its accounting and stock option granting

1 practices, and present and future business prospects. Because of these positions and such access,
 2 each of these defendants knew or recklessly disregarded that the adverse facts specified herein had
 3 not been disclosed to and were being concealed from the public.

4 **BACKGROUND OF STOCK OPTIONS**

5 **The Purpose of Stock Options**

6 41. The purpose of a stock option granted by a corporation to an officer, director,
 7 employee or other person allows the option holder to purchase the corporation's stock at a specified
 8 price – referred to as the “exercise price” – for a specified period of time. Under most stock option
 9 plans, the exercise price of the option is based on the price of the stock as of the grant date, which
 10 could be the closing price of the stock on that date, an average of the high and low of the prices on
 11 that date, or other valuation method. When the holder of a stock option exercises such an option, he
 12 or she purchases the stock from the company at the exercise price – regardless of the stock's market
 13 price at the time the option is exercised. Under most plans, the employees or option recipient cannot
 14 exercise the options until a vesting period has passed. Options with a strike price equal to the current
 15 trading price of the underlying stock are referred to as being “at the money” and options with a strike
 16 price below the current trading price of the stock are “in the money.”

17 42. Companies typically grant stock options to their executives and directors as equity-
 18 based compensation, which is intended to create incentives to boost profitability and increase the
 19 overall value of the enterprise. Thus, stock options are intended to align the interests of company
 20 management with those of shareholders. With a significant option package, members of company
 21 management have a great incentive to improve the company's business; such efforts tend to raise the
 22 company's share price, which increases both the value of his or her options and shareholder returns.

23 43. There are several reasons why stock options have been increasingly included in the
 24 compensation packages of executives and non-executives. According to SEC Chairman Christopher
 25 Cox, beginning in 1972, the accounting rule was that employee stock options would not have to be
 26
 27
 28

1 shown as an expense on the income statements – so long as the terms were fixed when the option
2 was granted, and so long as the exercise price was equal to the market price on that day.

3 44. Further, as indicated by Linda Thomsen, Director of the SEC's Division of
4 Enforcement, options became more popular after Section 162(m) of the Internal Revenue Code
5 ("Section 162(m)") went into effect in 1993, which limited the tax deductibility of compensation
6 awarded to certain top executives to \$1 million. This change in the tax law tilted compensation
7 practices away from salary and other forms of compensation in favor of performance-based
8 compensation to which the cap did not apply, such as stock options. Unfortunately, as the use of
9 options compensation has increased, so has the abusive practice of backdating.
10

11 **Backdating of Stock Options**

12 45. The improper practice of "backdating" stock options occurs when one or more
13 individuals within a company retroactively sets the exercise price for a stock option based on a date
14 other than the grant date of the option. Significant accounting, disclosure and tax consequences
15 resulting from grants of "in the money" options provide an incentive for corporate executives to
16 covertly backdate these options. If an option is backdated to a day on which the stock's market price
17 was lower than the price on the day the option was granted, the holder pays less and the company
18 receives less money for the stock when the option is exercised. This arrangement gives the
19 executive or director greater compensation than that to which he or she is entitled, and undermines
20 the incentive value of the option grant.
21

22 46. As a result, as indicated in the testimony of United States Deputy Attorney General
23 Paul McNulty before the Senate Committee on Finance, "some corporate executives have engaged in
24 schemes to falsify corporate books and records, to mislead the corporation's board of directors and
25 outside auditors, to file false reports and financial statements with the Securities and Exchange
26 Commission (SEC), and to mislead shareholders, the investing public and the financial press."
27
28

1 47. On a fundamental level, backdated options allow company executives and directors to
2 prosper without building long-term shareholder value. By giving them an instant paper profit,
3 backdating undermines the purpose of options – which is to motivate those who lead the company to
4 act in ways that improve the business and consequently lift the stock price. Indeed, backdating is a
5 lot like betting on a poker hand after all the cards are displayed.

6
7 48. The practice of backdating stock options can result in significant adverse tax
8 consequences for the company. Under Section 162(m), at-the-money options are usually considered
9 performance-based compensation (typically granted to the five highest-paid executives) that is
10 deductible from corporate tax returns even if an executive earns more than \$1 million a year. If it
11 turned out that these performance-based options were actually in-the-money options, however, it
12 would automatically disqualify such options from receiving the tax break. Instead, a company's tax
13 deduction would be capped at \$1 million for each of the five highest-paid executives. In effect, the
14 problem with backdating is that it allows in-the-money options to appear in regulatory filings as if
15 they were ordinary at-the-money grants. Ultimately, if it turns out that the exercise price of an
16 option has to be corrected or if a previously-issued option is disallowed altogether, any tax benefits
17 from employee stock option exercises the company may have received must either be adjusted or
18 eliminated, with the company suffering, of course, from the interest and penalties assessed or to be
19 assessed by the IRS relative to the backdating.
20

21
22 49. Other implications are seen in the context of the two common forms of employee
23 options – non-statutory stock options, or “NSOs,” and incentive stock options, or “ISOs,” as
24 indicated in the testimony of Linda Thomsen, Director of the SEC's Division of Enforcement before
25 the U.S. Senate Committee on Finance, on September 6, 2006:

26 When an employee exercises a non-statutory option, the difference between
27 the exercise price and the fair market value of the company's stock on the date of
28 exercise is treated as ordinary compensation and the employee is generally taxed on
the gain at his or her ordinary income tax rates. The company incurs employee

1 withholding obligations on this gain, but also is entitled to an associated tax
 2 deduction on the gain. When companies backdate option grants to a lower exercise
 3 price, employees can obtain a larger taxable gain upon the exercise of an NSO and
 companies can obtain a correspondingly larger tax deduction and withholding
 obligation on that gain.

4 Unlike the exercise of NSOs, incentive stock options, or ISOs, afford
 5 employees favorable tax treatment because any gain at exercise is not taxed as
 6 ordinary income, although the gain may be subject to alternative minimum tax.
 7 Accordingly, a company does not obtain any corresponding tax deduction (or incur
 8 withholding obligations) at the time of exercise. In addition, if an employee holds
 9 the stock for the statutory holding period prior to sale – one year after exercise and
 10 two years after grant – then the sale is considered a “qualifying disposition” and the
 11 entire gain on sale is taxed at favorable capital gains rates. However, among the
 12 statutory requirements of ISOs is that they be granted at-the-money. An ISO that is
 granted in-the-money loses its favorable status and instead is treated under the tax
 code as a non-statutory option (NSO), including ordinary income recognition by the
 employee on any gain at exercise and a corresponding tax deduction by the company
 on that gain. Backdating allows an employee to treat what is in fact a non-qualified
 option as an incentive stock option, which can result in the employee underpaying
 taxes while causing the company to lose the tax deduction to which it otherwise
 would have been entitled.

13 50. The instant paper profit received by certain NVIDIA executives and directors through
 14 the use of backdated stock options raises serious accounting issues. Under Generally Accepted
 15 Accounting Principles (“GAAP”), this instant paper profit was equivalent to extra compensation and
 16 should have been reflected as a cost to NVIDIA in the Company’s financial statements. But as
 17 NVIDIA failed to properly record the costs associated with the extra compensation in its financial
 18 statements, its profits were overstated during the fiscal periods in which the options were granted.

19 **Criminal Nature of Backdating Misconduct**

20 51. As noted in Deputy Attorney General McNulty’s testimony before the Senate Finance
 21 Committee:

22 When stock options are surreptitiously backdated, the corporation will file false and
 23 misleading reports and financial statements with the SEC and other regulatory
 24 authorities. By doing that, the corporation disseminates false and fraudulent
 25 information to the investing public. Failing to report the backdating of options
 26 misrepresents the true nature of stock option plans and executive compensation and
 27 thus, a company obtains shareholder approval for the company’s compensation plans
 28 under false pretenses. Grants of backdated options contrary to the terms of
 shareholder-approved option compensation plans can also be considered an
 embezzlement of corporate assets because the defendants are misappropriating shares
 of the company at an unauthorized and discounted value.

1 52. These acts can be criminal for several reasons as noted by Deputy Attorney General
2 McNulty:

3 First, a grant of “in the money” options is treated under accounting principles as
4 compensation to the option holder, and therefore should be treated as an expense by
5 the corporation and be deducted from reported revenue. In contrast, grants of options
6 with an exercise price either above or at the trading price on the real grant date are
7 not considered an expense of the corporation. Thus, if a corporation both backdates
8 options and prices them “in the money” without properly disclosing this fact, the
9 corporation is falsifying its books and records, fraudulently decreasing expenses and
falsely inflating profits. Second, backdating of stock options also conceals the fact
that employees are being given the right to purchase the underlying stock at a
discount from the fair market value on the date the option was really granted – and
that misrepresents the employee’s compensation. Finally, the sale of the underlying
stock to these favored employees at a discount to the market price dilutes the value of
the shares held by stockholders.

10 53. On July 20, 2006, the SEC announced it had filed civil charges against two former
11 Brocade Communications Systems, Inc. executives for illegally manipulating stock option grant
12 dates. Criminal indictments were brought simultaneously in federal court, indicating the serious
13 view taken by governmental agencies with respect to improperly backdated options. In a news
14 conference detailing the charges, SEC Chairman Christopher Cox proclaimed that “*the full weight*
15 *of the Federal government is being put behind this effort to stamp out fraudulent stock option*
16 *backdating.*” He disclosed that additional cases likely would be brought in the “coming weeks and
17 months.” Cox further indicated that the SEC was then investigating more than 80 companies, a large
18 percentage of which are technology companies, meaning many more executives could face criminal
19 charges related to manipulating options.
20

21 54. Indeed, on July 31, 2006, the Federal Bureau of Investigation (“FBI”) issued an arrest
22 warrant for Jacob “Kobi” Alexander (“Alexander”), the former CEO of Comverse Technology, Inc.
23 Alexander is charged with conspiracy related to backdated stock options. Not surprisingly, on
24 August 9, 2006, he and fellow company cohorts David Kreinberg (“Kreinberg”) (Comverse’s former
25 CFO) and William F. Sorin (Converse’s former General Counsel) were criminally charged by the
26 U.S. Attorney’s Office in the Eastern District of New York for allegedly orchestrating a decade-old
27
28

1 scheme to fraudulently backdate option grants and for operating a secret stock options slush fund.
 2 After transferring more than \$57 million from the United States to accounts in the Middle East,
 3 Alexander fled the country. Emphasizing the importance that the U.S. government has placed on
 4 dealing with the backdating options scandal, Alexander was placed on the FBI's most wanted list.
 5 On September 27, 2006, after an international manhunt, Alexander was captured in Namibia, and is
 6 expected to be extradited to the United States to stand trial. On October 24, 2006, less than three
 7 months after being charged, it was announced that Kreinberg had pleaded guilty to securities-fraud
 8 charges related to stock options backdating in federal court.

10 55. This resolve of the government is being felt not only through the federal grand jury
 11 indictments and acceptance of guilty pleas in federal court, as well as the concerted action of the
 12 Justice Department and the SEC, but also through statements of leading legislative figures such as
 13 those of Senator Chuck Grassley in regards to stock options backdating:
 14

15 It is important that we defend the American principles of capitalism and free
 16 market innovation, and it is also important that we defend the equally important
 17 American principles of fairness and the rule of law. These are not conflicting
 principles. They are the backbone of our nation. *And those who violate them need
 to answer for that.*

18 FACTUAL ALLEGATIONS

19 56. During the late 1990s and 2000s, NVIDIA enjoyed steady growth in both sales and
 20 the size of its operations. To recruit and retain directors, officers and key employees, NVIDIA, at
 21 the direction of its Board of Directors, made liberal use of stock options as a form of compensation.

22 57. Each option gave the recipient the right to buy one share of NVIDIA common stock
 23 from the Company at a set price, called the "exercise" or "strike" price, on a future date after the
 24 option vested. The option was "in-the-money" whenever the trading price of NVIDIA common
 25 stock exceeded the option's exercise price. The option was "at-the-money" whenever the trading
 26 price of NVIDIA common stock and the exercise price were the same. The option was "out-of-the-
 27 money" or "underwater" whenever the trading price of NVIDIA common stock was less than the
 28 exercise price.

58. Throughout the relevant period, defendants represented that NVIDIA's option grants were made at fair market value, *i.e.*, the closing price of NVIDIA common stock on the date of grant. The Board of Directors has no discretion to contravene the terms of the stock option plans. Altering the actual date of grant so as to affect the exercise price, as defendants did, contravenes the plans.

The NVIDIA Stock Option Plans

59. At all relevant times, NVIDIA granted stock options pursuant to the 1998 Equity Incentive Plan and the 1998 Non-Employee Directors' Stock Option Plan.

60. According to NVIDIA's public disclosures, options are granted at fair market value on the date of grant. The NVIDIA Board of Directors also represented that stock options will only have value if the Company's stock price increases, and not by virtue of the backdating of such options.

NVIDIA's By-Laws

61. At all relevant times, the By-Laws of NVIDIA authorized the Board of Directors and/or Compensation Committee to act formally on option grant proposals in one of two ways: The Board of Directors and/or Compensation Committee could act without a formal meeting if all members of the Board or Committee consented in writing to the adoption of a resolution authorizing the action. This is "unanimous written consent." Alternatively, the Board of Directors and/or Compensation Committee could act by holding a meeting at which a quorum of the Board or Committee members is present, if a majority of those present at the meeting approve the action.

62. For some of the NVIDIA option grants made during the relevant period, the Board of Directors and/or Compensation Committee acted through unanimous written consents, and not through a formal meeting of the Board of Directors or Compensation Committee members.

Backdated Stock Option Grants at NVIDIA

63. A review of the annual stock option grants to directors and top officers of NVIDIA between 1999-2002 shows that the stock option grants were dated: (i) near or on the very day that NVIDIA stock hit its low price for the month; or (ii) in advance of sharp stock price increases. This astonishing multi-year pattern of stock option grants on dates with highly favorable exercise prices – at or near a periodic low, or preceding a sharp increase in the share price – indicates that the

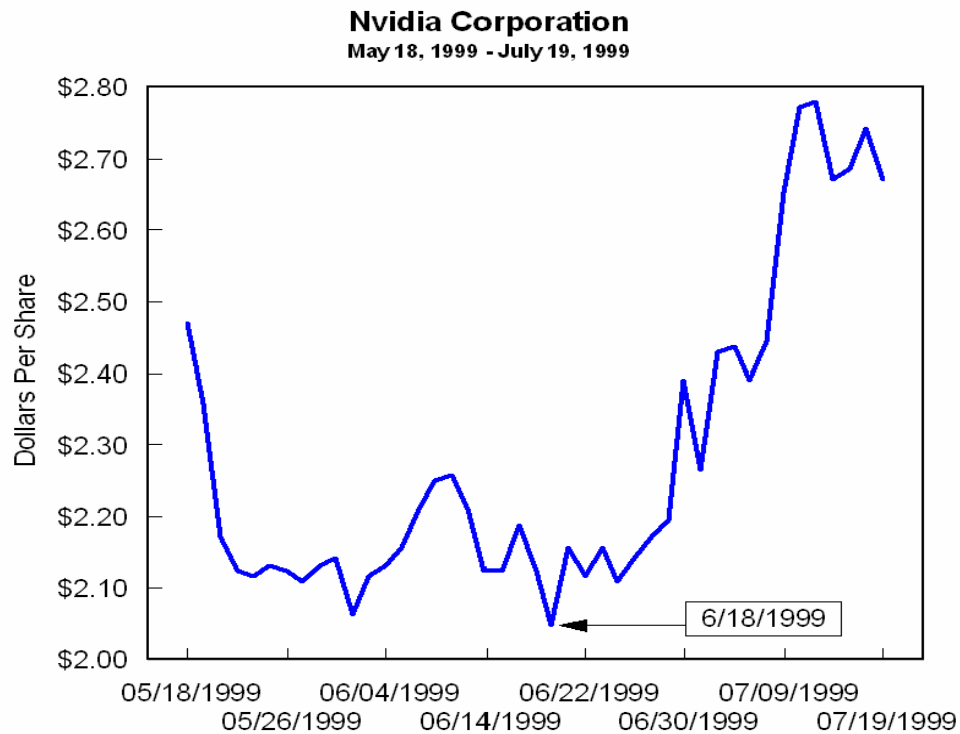
1 purported grant dates of stock options were not the actual dates on which the option grants were
 2 made. Rather, the pattern indicates that the grants were repeatedly backdated to dates with
 3 exceedingly low stock prices or, at the least, granted when NVIDIA's officers and directors knew at
 4 the time that those options would quickly be worth much more – a practice referred to as “spring
 5 loading” of options. As the court determined in *In re Tyson Foods, Inc. Consol. S'holder Litig.*, No.
 6 1106-N, 2007 Del. Ch. LEXIS 19, at *62 (Del. Ch. Feb. 6, 2007):

7 It is difficult to conceive of an instance, consistent with the concept of loyalty and
 8 good faith, in which a fiduciary may declare that an option is granted at “market
 9 rate” and simultaneously withhold that both the fiduciary and the recipient *knew* at
 10 the time that those options would quickly be worth much more.

11 **1999 Stock Option Grants¹**

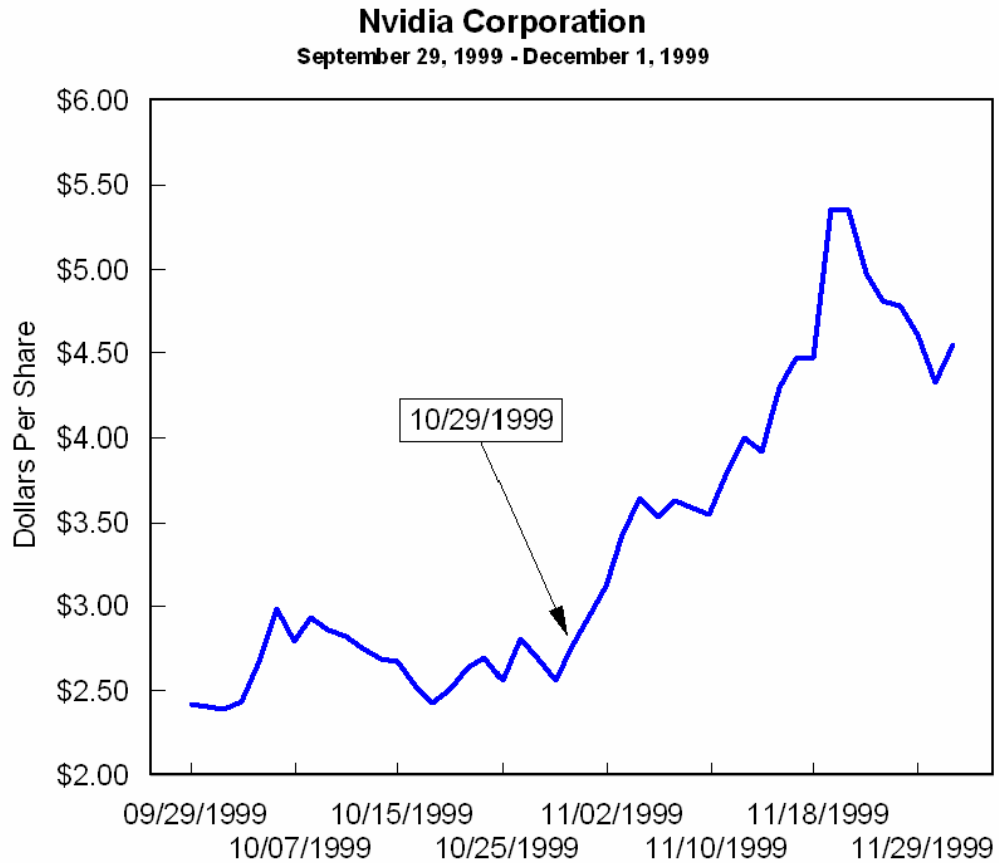
12 64. During 1999, the public trading price of NVIDIA common stock ranged from a price
 13 of \$1.50 to \$2.72 per share, with a weighted average closing price of \$2.45. A total of 1,100,000
 14 options were purportedly granted on June 18, 1999 to six NVIDIA directors. The exercise price was
 15 \$2.05 per share. The price of the stock 20 trading days after the grant was \$2.67 per share, for a 20-
 16 day cumulative return based on the exercise price of 30.53%. The exercise price was one of the
 17 lowest closing prices for the month of June 1999. A graph demonstrating the timing of this grant
 18 follows below:

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27 ¹ All exercise prices, number of options and stock prices are adjusted for splits.
28



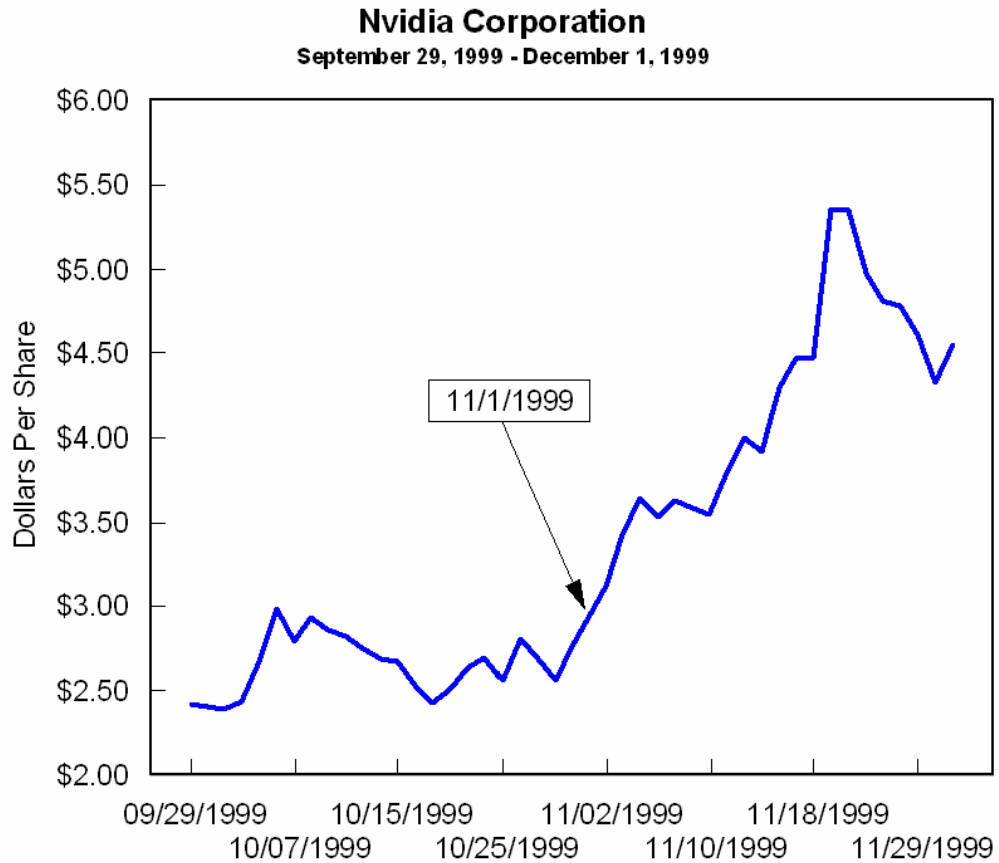
Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
06/18/99	Jones	200,000	\$2.05	\$409,375	\$66,798
06/18/99	Coxe	200,000	\$2.05	\$409,375	\$66,798
06/18/99	Miller	160,000	\$2.05	\$327,500	\$53,438
06/18/99	Seawell	200,000	\$2.05	\$409,375	\$66,798
06/18/99	Stevens	200,000	\$2.05	\$409,375	\$66,798
06/18/99	Gaither	40,000	\$2.05	\$81,875	\$13,360

65. A total of 168,000 options were purportedly granted on October 29, 1999 to defendant Fischer. The exercise price was \$2.56 per share. The price of the stock 20 trading days after the grant was \$4.75 per share, for a 20-day cumulative return based on the exercise price of 86.59%. The exercise price was the lowest closing price for the month of October 1999. A graph demonstrating the timing of this grant follows below:



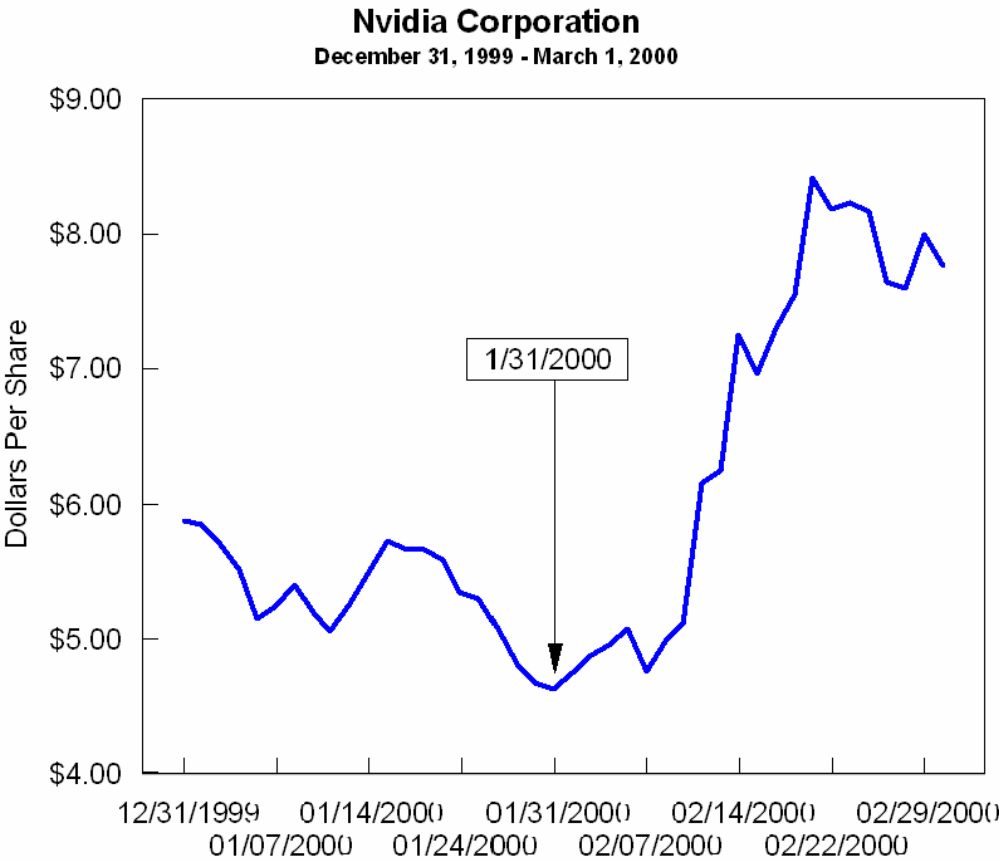
Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
10/29/99	Fischer	168,000	\$2.56	\$430,500	\$803,258

66. A total of 240,000 options were purportedly granted on November 1, 1999 to two NVIDIA executives. The exercise price was \$2.94 per share. The price of the stock 20 trading days after the grant was \$4.33 per share, for a 20-day cumulative return based on the exercise price of 47.34%. The exercise price was the lowest closing price for the month of November 1999. A graph demonstrating the timing of this grant follows below:



Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant)	Total Grant Value 20 Trading Days After Grant
11/01/99	TBD	120,000	\$2.94	\$352,500	519,372
11/01/99	TBD	120,000	\$2.94	\$352,500	519,372

67. A total of 3,200,000 options were purportedly granted on January 31, 2000 to NVIDIA's President and CEO, defendant Huang. The exercise price was \$4.63 per share. The price of the stock 20 trading days after the grant was \$8.00 per share, for a 20-day cumulative return based on the exercise price of 72.68%. The exercise price was the lowest closing price for the month of January 2000. A graph demonstrating the timing of this grant follows below:

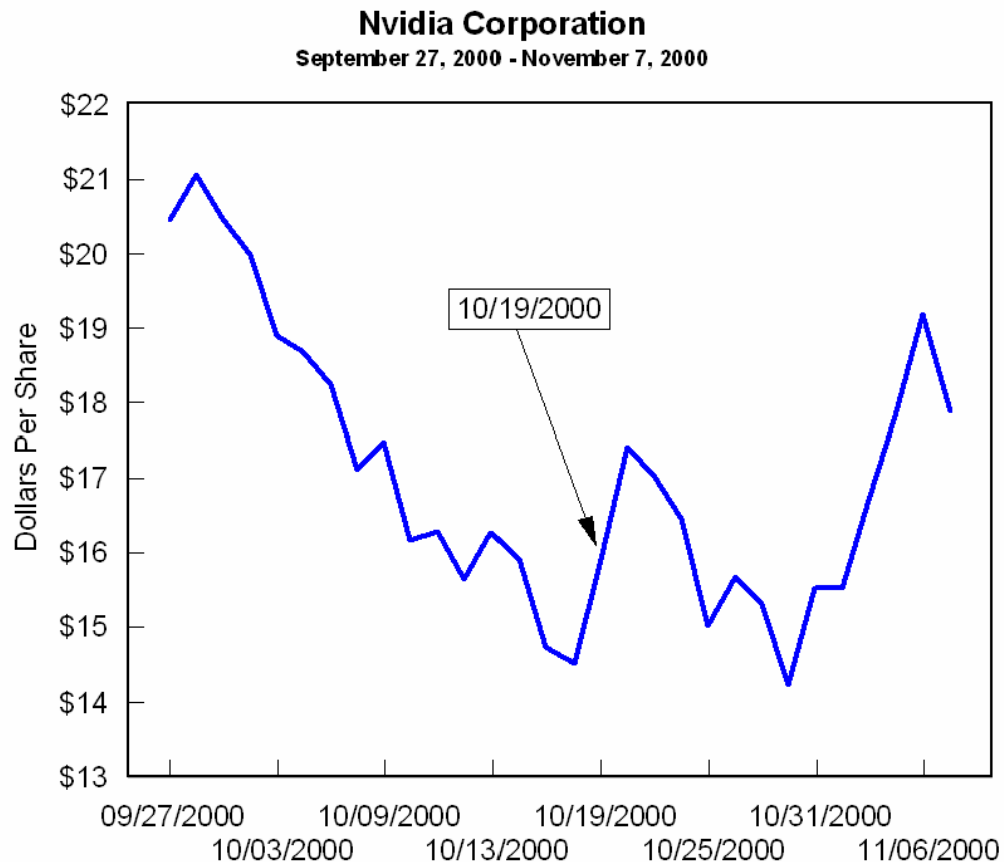


Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
01/31/00	Huang	3,200,000	\$4.63	\$14,824,000	\$25,600,000

2000 Stock Option Grants

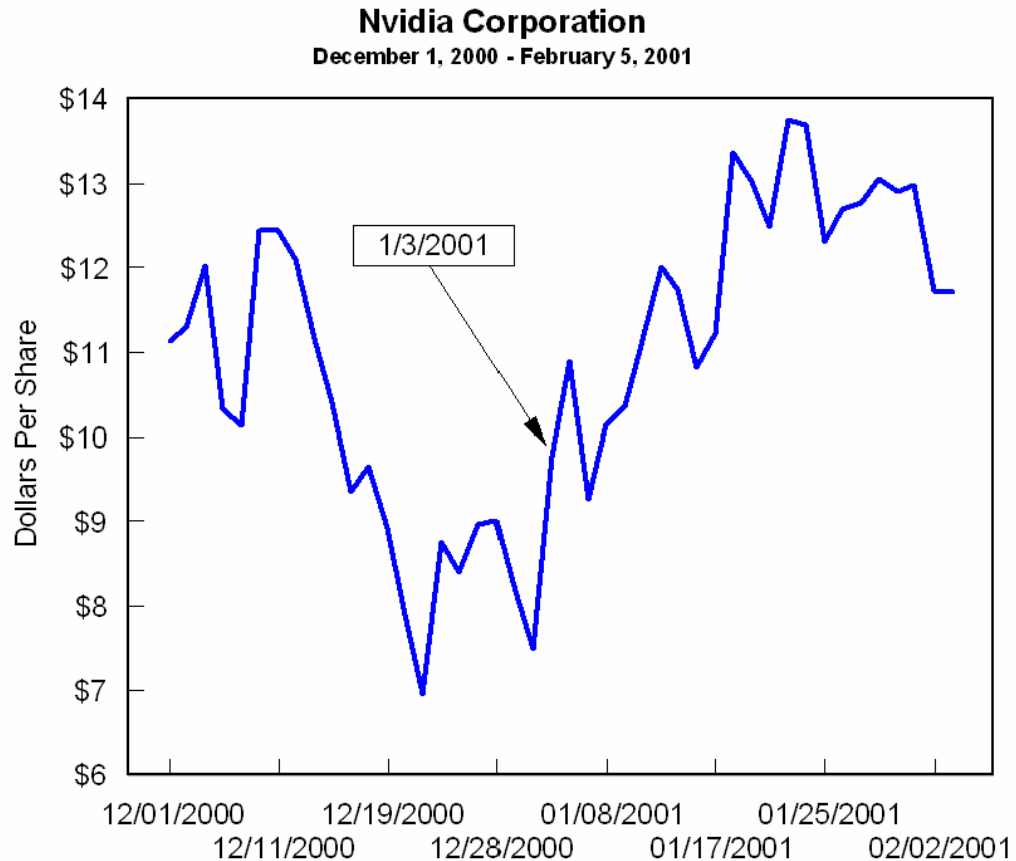
68. During 2000, the public trading price of NVIDIA common stock ranged from a price of \$2.05 to \$5.87 per share, with a weighted average closing price of \$3.42. A total of 555,192 options were purportedly granted on July 28, 2000 to an NVIDIA executive. A total of 30,000 options were purportedly granted on October 19, 2000, to two NVIDIA executives. The exercise price was \$14.52 per share. The price of the stock 20 trading days after the grant was \$17.24 per share, for a 20-day cumulative return based on the exercise price of 18.76%. The exercise price was

the lowest closing price for the month of October 2000. A graph demonstrating the timing of this grant follows below:



Date	Executive	No. of Options Granted)	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
10/19/00	Fischer	15,000	\$14.52	\$870,900	\$1,034,298
10/19/00	Malachowsky	15,000	\$14.52	\$870,900	\$1,034,298

69. A total of 720,000 options were purportedly granted on January 3, 2001, to four NVIDIA executives. The exercise price was \$7.49 per share. The price of the stock 20 trading days after the grant was \$12.91 per share, for a 20-day cumulative return based on the exercise price of 72.44%. The exercise price was the lowest closing price for the month of January 2001. A graph demonstrating the timing of this grant follows below:

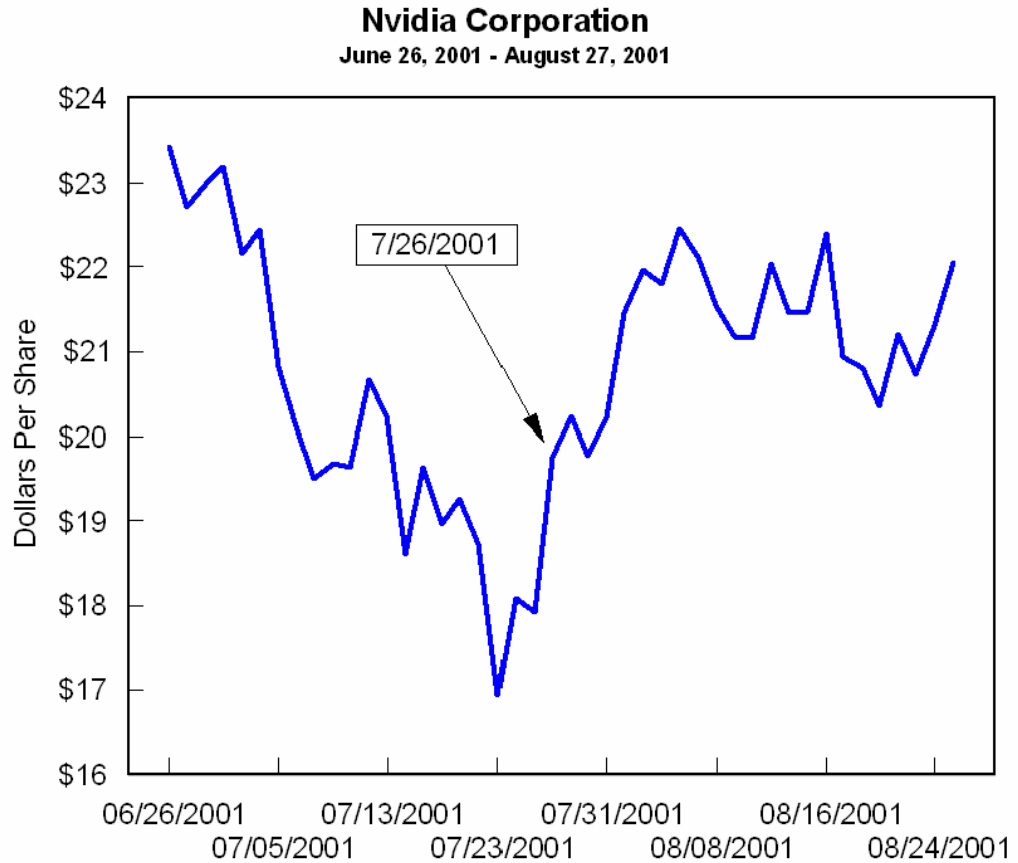


Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
01/03/01	Fischer	200,000	\$7.49	\$1,497,000	\$2,581,260
01/03/01	Hoberg	200,000	\$7.49	\$1,497,000	\$2,581,260
01/03/01	Malachowsky	200,000	\$7.49	\$1,497,000	\$2,581,260
01/03/01	Priem	120,000	\$7.49	\$898,200	\$1,548,756

2001 Stock Option Grant

70. During 2001, the public trading price of NVIDIA common stock ranged from a price of \$4.74 to \$21.62 per share, with a weighted average closing price of \$13.43. A total of 1,620,000 options were purportedly granted on July 26, 2001 to four NVIDIA executives, including its President and CEO, defendant Huang. The exercise price was \$17.92 per share. The price of the stock 20 trading days after the grant was \$21.20 per share, for a 20-day cumulative return based on

the exercise price of 18.27%. The exercise price was one of the lowest closing prices for the month of July 2001. A graph demonstrating the timing of this grant follows below:



Date	Executive	No. of Options Granted	Exercise Price	Total Grant Value at Date of Grant	Total Grant Value 20 Trading Days After Grant
07/26/01	Huang	1,000,000	\$17.92	\$17,922,500	\$21,197,500
07/26/01	Fischer	140,000	\$17.92	\$2,509,150	\$2,967,650
07/26/01	Hoberg	240,000	\$17.92	\$4,301,400	\$5,087,400
07/26/01	Malachowsky	240,000	\$17.92	\$4,301,400	\$5,087,400

71. Overall, between 1999-2001, there were numerous backdated option grants at NVIDIA. Backdated, in-the-money options were granted during that period to NVIDIA top executives and a majority of members of the Board of Directors, *i.e.*, Coxe, Gaither, Jones, Miller, Seawell, and Stevens. All of the grants made by and/or to defendants during the relevant period were granted at or near the lowest closing price for the month and/or fiscal quarter. Because the

1 odds of such an occurrence happening randomly are so remote, the only likely explanation for this
2 pattern was that their stock options had been back- or misdated.

3 72. Equally indicative of defendants' stock option manipulation is the fact that before the
4 passage of the Sarbanes-Oxley Act of 2002, several option grants to NVIDIA executives came at
5 monthly lows in NVIDIA share prices. However, following the passage of the Sarbanes-Oxley Act
6 of 2002, this trend reversed. Between August 2002 and the present, only one of the option grants to
7 NVIDIA executives came at a monthly low. This precipitous decline in the number of well-timed
8 stock option grants received by NVIDIA directors, officers and employees further demonstrates the
9 suspicious timing of defendants' stock option grants.

10 73. Backdating the date of issuance of the executive stock options violated NVIDIA's
11 stock option plans, which provided that the exercise price of options to purchase NVIDIA common
12 stock shall not be less than 100% of the fair market value on the date of grant. It also is directly
13 contradicted by the public disclosures in NVIDIA's proxy statements and SEC Reports on Form 10-
14 K which defendants signed at various times. The secret practice of backdating stock option grants to
15 themselves and their colleagues was in breach of defendants' fiduciary duties, including their duties
16 of good faith, honesty and loyalty, owed to NVIDIA and its shareholders.

17 74. The backdating scheme, among other things, enabled defendants to disguise the fact
18 that the Company was paying higher compensation to directors, executives and employees by
19 awarding them in-the-money options and to avoid having to expense the in-the-money portion as
20 compensation expense and thus avoid reductions in the Company's net income and earnings.
21 Keeping the scheme secret also hid the injury to the Company which occurred when directors,
22 executives and employees exercised the options and made capital contributions to NVIDIA that were
23 less than they should have paid, had the options not been granted in-the-money.

24 75. The scheme also conferred great personal financial benefits on NVIDIA's directors
25 and officers. For example, NVIDIA directors Coxe, Seawell, Stevens, Jones, Miller and Gaither
26 were awarded 200,000, 200,000, 200,000, 200,000, 160,000, and 40,000, respectively. Likewise,
27 NVIDIA officers Huang, Fischer, Malachowsky, Hoberg and Priem were awarded 4,300,000,
28 523,000, 455,000, 440,000 and 120,000 options, respectively. Contrary to the express terms of

1 NVIDIA's stock option plans, all of these options were manipulated and carried an exercise price
2 below fair market value at the time of grant. Defendants have enjoyed huge profits on their exercise
3 of options and sales of the underlying shares, and collectively continue to hold backdated options
4 worth millions of dollars.

5 **False Proxy Statements**

6 76. From 1999 to 2006, defendants, with the knowledge and approval and participation of
7 one another, and for the sole purpose and with the effect of concealing the manipulation of stock
8 option grants, as alleged herein, disseminated to shareholders and filed with the SEC the following
9 annual proxy statements that contained material misrepresentations and omissions.

10 77. The material misrepresentations and omissions in NVIDIA's 1999-2006 proxy
11 statements fall into three general categories: (i) statements failing to disclose that the stated purpose
12 of option grants to NVIDIA executives, *i.e.*, linking a significant portion of their compensation to the
13 future performance of the Company – was significantly undermined to the detriment of the Company
14 because the option grants described in the proxies were backdated; (ii) misrepresentations that the
15 options granted were priced at the fair market value on the date of grant, when in fact they were
16 fraudulently backdated; and (iii) misrepresentations relating to the amount of compensation received
17 by the defendants in during the backdating period.

18 78. The Company's proxy statements were submitted to shareholders in connection with
19 the annual election of directors, as well as for shareholder approval of proposals offered by the
20 NVIDIA Board of Directors, including the adoption and/or amendment of the 1998 Equity Incentive
21 Plan and 1998 Non-Employee Directors' Stock Option Plan. The proxy statements' materially false
22 and misleading statements follow below.

23 **1999 Proxy Statement**

24 79. NVIDIA's 1999 proxy statement was filed with the SEC, and contemporaneously
25 disseminated to shareholders from California, on or about May 17, 1999. Defendants Coxe, Gaither,
26 Huang, Jones, Miller, Seawell and Stevens were directors at this time.

80. The 1999 proxy contained at least the following materially false and misleading statements about the operation and administration of NVIDIA's 1998 Equity Incentive Plan ("Incentive Plan") and 1998 Non-Employee Directors' Stock Option Plan:

- "The Incentive Plan is administered by the Compensation Committee, which determines the recipients and types of awards to be granted, including the exercise price, number of shares subject to the award and the exercisability thereof."
- *"The Compensation Committee determines the exercise price of options granted under the Incentive Plan. However, the exercise price for an incentive stock option cannot be less than 100% of the fair market value of the Common Stock on the date of the option grant"*
- "Each non-employee director of the Company receives nonstatutory stock option grants under the Company's 1998 Non-Employee Directors' Stock Option Plan (the "Directors' Plan"). . . . *The exercise price of the options granted under the Directors' Plan is equal to the fair market value of the Common Stock on the date of grant.*"

81. These statements were false and misleading because the options granted to NVIDIA's executives and key employees did not carry the fair market value on the date of the grant, but were in fact backdated. They were also false and misleading because they failed to disclose that the Compensation Committee (defendants Coxe and Jones) had permitted other NVIDIA executives to backdate option grants to maximize their own profits, at the expense of the Company.

82. The 1999 proxy also contained false and misleading statements about the pricing of specific option grants to defendants Fisher, Huang, Malachowsky and Priem during the fiscal year. In footnote 3 to the "Stock Option Grant Exercise Table" on page 17, the 1999 proxy stated:

The exercise price per share for Mr. Fisher's option *was equal to the fair market value of the Common Stock on the date of grant as determined by the Board. The exercise price per share for each of the options granted to Messrs. Huang, Malachowsky and Priem was equal to 110% of the fair market value of the Common Stock on the date of grant* as determined by the Board, as each owned greater than 10% of the combined voting power of the Company on the date of grant.

83. These statements were false and misleading when made because they state that option grants made to defendants Fisher, Huang, Malachowsky and Priem were made at prices equal to the fair market value of NVIDIA common stock on the date of grant when, in fact, the options granted in fiscal 1999 were backdated.

84. In addition, the NVIDIA Board of Directors, through its Compensation Committee (Coxe and Jones), made the following representations regarding the Company's compensation policies and the role played by its stock option plans in aligning the interest of management and shareholders:

The Company's executive compensation policies and practices are established and administered by the Compensation Committee of the Board of Directors (the "Committee"). . . . *The Committee's determinations regarding compensation of the Chief Executive Officer and other executive officers are reviewed with all the non-employee directors.*

* * *

Compensation Plans

* * *

Long-term equity incentives are provided through grants of stock options to executive officers and other key employees pursuant to the Company's 1998 Equity Incentive Plan. . . . The Committee believes this element of the total compensation program directly links the participant's interests with those of the stockholders and the long-term value of the Company. *Stock options are granted at not less than fair market value and have value only if the Company's stock price increases.*

85. These statements were materially false and misleading when made because the NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking compensation to performance and incentivizing employees to devote their maximum efforts to the success of the Company – was significantly undermined to the detriment of the Company because the option grants to those directors and/or officers were backdated.

2000 Proxy Statement

86. NVIDIA's 2000 proxy statement was filed with the SEC, and contemporaneously disseminated to shareholders from California, on or about May 26, 2000. Defendants Coxe, Gaither, Huang, Jones, Miller, Seawell and Stevens were directors at this time.

87. According to the 2000 proxy, the Compensation Committee makes recommendations, which then must be approved by the full NVIDIA Board of Directors concerning salaries and incentive compensation and stock option awards to executives and key employees.

The Compensation Committee makes recommendations concerning salaries and incentive compensation, awards stock options to employees and consultants under the Company's stock option plans and otherwise determines compensation

1 levels and performs such other functions regarding compensation as the Board may
2 delegate.

3 88. The 2000 proxy contained at least the following materially false and misleading
4 statements about the operation and administration of NVIDIA's 1998 Non-Employee Directors'
5 Stock Option Plan:

6 *The exercise price of the options granted under the Directors' Plan is*
7 *equal to the fair market value of the Common Stock on the date of grant.*

8 * * *

9 In addition, in June 1999, non-employee directors received automatic non-qualified
10 stock option grants under the Director Plan, using the criteria set forth in such Plan.
11 Options to purchase shares of Common Stock in the form of annual grants for service
12 as directors were made to the following directors: Mr. Coxe, 20,000 shares; Mr.
13 Gaither, 5,000 shares; Mr. Jones, 20,000 shares; Mr. Miller, 20,000 shares; Mr.
14 Seawell, 20,000 shares; and Mr. Stevens, 20,000 shares.

15 89. These statements were false and misleading because the options granted to NVIDIA's
16 directors did not carry the fair market value on the date of the grant, but were in fact backdated.
17 They were also false and misleading because they failed to disclose that the Compensation
18 Committee (defendants Coxe and Jones) had permitted other NVIDIA executives to backdate option
19 grants to maximize their own profits, at the expense of the Company.

20 90. The 2000 proxy also contained false and misleading statements about the pricing of
21 option grants to NVIDIA executives during the fiscal year ended January 30, 2000. In footnote 3 to
22 the "Stock Option Grants and Exercises" table on page 11, the 2000 proxy stated:

23 The Company grants options to its executive officers under its 1998 Equity
24 Incentive Plan. . . .

25 The following tables show for the fiscal year ended January 30, 2000, certain
26 information regarding options granted, to, exercised by, and held at year end, by the
27 Named Executive Officers:

28 **Option Grants In Last Fiscal Year**

* * *

(3) *The exercise price per share of each option was equal to the fair market value*
of the Common Stock on the date of grant as determined by the Board.

91. These statements were false and misleading when made because they state that option
grants made to defendants Huang and other NVIDIA insiders were made at prices equal to the fair

1 market value of NVIDIA common stock on the date of grant when, in fact, the options granted
2 during the year ended January 30, 2000 were backdated.

3 92. In addition, the NVIDIA Board of Directors, through its Compensation Committee
4 (Coxe and Jones), made the following representations regarding the Company's compensation
5 policies and the role played by its stock option plans in aligning the interest of management and
6 shareholders:

7 The Company's executive compensation policies and practices are
8 established and administered by the Compensation Committee of the Board of
9 Directors (the "Committee"). . . . *The Committee's determinations regarding
compensation of the Chief Executive Officer and other executive officers are
reviewed with all the non-employee directors.*

10 * * *

11 **Compensation Plans**

12 * * *

13 Long-term incentives have been in the form of stock options. The Committee
14 believes that equity-based compensation closely aligns the interests of executive
15 officers with those of stockholders by providing an incentive to manage the
16 Company with a focus on long-term strategic objectives set by the Board of Directors
relating to growth and stockholder value. Stock options are granted under the 1998
Equity Incentive Plan. *Stock options are granted at not less than fair market value
and have value only if the Company's stock price increases.*

17 * * *

18 **Chief Executive Officer Compensation**

19 * * *

20 *In fiscal 2001, Mr. Huang was also granted an option to acquire 400,000
shares of common stock at the fair market value of the stock on such date. . . .*
21 This grant was intended to continue to maintain the overall competitiveness of Mr.
22 Huang's compensation package and strengthen the alignment of Mr. Huang's
23 interests with those of the stockholders during a critical phase of the Company's
development.

24 93. These statements were materially false and misleading when made because the
25 NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking
26 compensation to performance and incentivizing employees to devote their maximum efforts to the
27 success of the Company – was significantly undermined to the detriment of the Company because
28 the option grants to those directors and/or officers were backdated. The statements were also

1 materially false and misleading when made because the NVIDIA Board failed to disclosed that the
 2 option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the
 3 date of grant.

4 **2001 Proxy Statement**

5 94. NVIDIA's 2001 proxy statement was filed with the SEC, and contemporaneously
 6 disseminated to shareholders from California, on or about June 25, 2001. Defendants Coxe, Gaither,
 7 Huang, Jones, Miller, Seawell and Stevens were directors at this time.

8 95. According to the 2001 proxy, the Compensation Committee makes recommendations,
 9 which then must be approved by the full NVIDIA Board of Directors, concerning salaries and
 10 incentive compensation and stock option awards to executives and key employees.

11 The Compensation Committee makes recommendations concerning salaries
 12 and incentive compensation, awards stock options to employees and consultants
 13 under our stock option plans and otherwise determines compensation levels and
 14 performs such other functions regarding compensation as the Board may
 delegate. . . . The Compensation Committee consists of three non-employee
 directors: Messrs. Coxe, Gaither and Jones. It acted by unanimous written consent
 five (5) times.

15 96. The 2001 proxy contained at least the following materially false and misleading
 16 statements about the operation and administration of NVIDIA's 1998 Non-Employee Directors'
 17 Stock Option Plan: *"The exercise price for options granted under the Director Plan Provisions is*
 18 *at least 100% of the fair market value on the date of grant."*

19 97. This statement was were false and misleading because the options granted to
 20 NVIDIA's directors did not carry the fair market value on the date of the grant, but were in fact
 21 backdated. They were also false and misleading because they failed to disclose that the
 22 Compensation Committee (defendants Coxe, Gaither and Jones) had permitted other NVIDIA
 23 executives to backdate option grants to maximize their own profits, at the expense of the Company.

24 98. The 2001 proxy also contained false and misleading statements about the pricing of
 25 option grants to NVIDIA executives during the fiscal year ended January 28, 2001. In footnote 3 to
 26 the "Stock Option Grants and Exercises" table on page 13, the 2001 proxy stated:

27 We grant options to our executive officers under the 1998 Plan. . . .
 28

The following tables show for the fiscal year ended January 28, 2001 certain information regarding options granted to, exercised by, and held at year-end by, the Named Executive Officers:

Option Grants In Last Fiscal Year

* * *

(3) The exercise price per share of each option was equal to the fair market value of the Common Stock on the date of grant as determined by the Board.

99. These statements were false and misleading when made because they state that option grants made to defendant Huang and other NVIDIA insiders were made at prices equal to the fair market value of NVIDIA common stock on the date of grant when, in fact, the options granted during the year ended January 28, 2001 were backdated.

100. In addition, the NVIDIA Board of Directors, through its Compensation Committee (Coxe, Gaither and Jones), made the following representations regarding the Company's compensation policies and the role played by its stock option plans in aligning the interest of management and shareholders:

Our executive compensation policies and practices are established and administered by the Compensation Committee of the Board of Directors. . . . *The Committee's determinations regarding compensation of the Chief Executive Officer and other executive officers are reviewed with all the non-employee directors.*

* * *

Compensation Plans

* * *

Long-term incentives have been in the form of stock options. We believe that equity-based compensation closely aligns the interests of executive officers with your interests as stockholders, by providing an incentive to manage NVIDIA with a focus on long-term strategic objectives set by the Board of Directors relating to growth and stockholder value. *Stock options are granted under the 1998 Equity Incentive Plan. Stock options are granted at not less than fair market value and have value only if NVIDIA's stock price increases.*

* * *

Chief Executive Officer Compensation

* * *

In fiscal 2001, Mr. Huang was also granted an option to acquire 800,000 shares of common stock at an exercise price of \$18.53, which was the fair market

1 *value of the stock on such date.* . . . This grant was intended to continue to maintain
 2 the overall competitiveness of Mr. Huang's compensation package and strengthen
 3 the alignment of Mr. Huang's interests with those of our stockholders during a
 4 critical phase of NVIDIA's development.

5 101. These statements were materially false and misleading when made because the
 6 NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking
 7 compensation to performance and incentivizing employees to devote their maximum efforts to the
 8 success of the Company – was significantly undermined to the detriment of the Company because
 9 the option grants to those directors and/or officers were backdated. The statements were also
 10 materially false and misleading when made because the NVIDIA Board failed to disclose that the
 11 option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the
 12 date of grant.

13 **2002 Proxy Statement**

14 102. NVIDIA's 2002 proxy statement was filed with the SEC, and contemporaneously
 15 disseminated to shareholders from California, on or about May 28, 2002. Defendants Coxe, Gaither,
 16 Huang, Jones, Miller, Seawell and Stevens were directors at this time.

17 103. According to the 2002 proxy, the Compensation Committee makes recommendations,
 18 which then must be approved by the full NVIDIA Board of Directors, concerning salaries and
 19 incentive compensation and stock option awards to executives and key employees.

20 The Compensation Committee makes recommendations concerning salaries
 21 and incentive compensation, awards stock options to employees and consultants
 22 under our stock option plans and otherwise determines compensation levels and
 23 performs such other functions regarding compensation as the Board may
 24 delegate. . . . The Compensation Committee is comprised of three non-employee
 25 directors: Messrs. Coxe, Gaither and Jones. It met one time during fiscal year 2002
 26 and acted by written consent four times.

27 104. The 2002 proxy contained at least the following materially false and misleading
 28 statements about the operation and administration of NVIDIA's 1998 Non-Employee Directors'
 29 Stock Option Plan: "*The exercise price for such options is equal to 100% of the fair market value*
 30 *on the date of grant.*"

31 105. This statement was false and misleading because the options granted to NVIDIA's
 32 directors did not carry the fair market value on the date of the grant, but were in fact backdated.

1 They were also false and misleading because they failed to disclose that the Compensation
 2 Committee (defendants Coxe, Gaither and Jones) had permitted other NVIDIA executives to
 3 backdate option grants to maximize their own profits, at the expense of the Company.

4 106. The 2002 proxy also contained false and misleading statements about the pricing of
 5 option grants to NVIDIA executives during the fiscal year ended January 28, 2001. In the “Stock
 6 Option Grants and Exercises” table on page 19, the 2002 proxy stated:

7 We grant options to our executive officers under our 1998 Equity Incentive
 8 Plan, the 1998 Plan. . . . ***The exercise price of each option was equal to the closing
 price of our common stock as reported on the Nasdaq Stock Market for the last
 market trading day prior to the date of grant.***

9 107. These statements were false and misleading when made because they state that option
 10 grants made to defendant Huang and other NVIDIA insiders were made at prices equal to the fair
 11 market value of NVIDIA common stock on the date of grant when, in fact, the options granted
 12 during fiscal 2002 were backdated.

13 108. In addition, the NVIDIA Board of Directors, through its Compensation Committee
 14 (Coxe, Gaither and Jones), made the following representations regarding the Company’s
 15 compensation policies and the role played by its stock option plans in aligning the interest of
 16 management and shareholders:

17 Our executive compensation policies and practices are established and
 18 administered by the Compensation Committee of the Board of Directors. . . . ***The
 Compensation Committee’s determinations regarding compensation of the Chief
 Executive Officer and other executive officers are reviewed with all the non-
 employee directors.***

20 * * *

21 COMPENSATION PLANS

22 * * *

23 Long-term incentives have been in the form of stock options. We believe that
 24 equity-based compensation closely aligns the interests of executive officers with your
 25 interests as stockholders by providing an incentive to manage NVIDIA with a focus
 26 on long-term strategic objectives set by the Board of Directors relating to growth and
 stockholder value. ***Stock options are granted under the 1998 Equity Incentive
 Plan. Stock options are granted at not less than fair market value and have value
 only if NVIDIA’s stock price increases.***

27 * * *

CHIEF EXECUTIVE OFFICER COMPENSATION

* * *

In fiscal 2003, Mr. Huang was also granted an option to acquire 250,000 shares of common stock at an exercise price of \$37.17, which was the fair market value of the common stock on such date. . . . The fiscal 2002 and 2003 grants are intended to continue to maintain the overall competitiveness of Mr. Huang's compensation package and strengthen the alignment of Mr. Huang's interests with those of our stockholders during a critical phase of NVIDIA's development by continuing to provide through an integrated vesting schedule long-term stock incentive compensation.

109. These statements were materially false and misleading when made because the NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking compensation to performance and incentivizing employees to devote their maximum efforts to the success of the Company – was significantly undermined to the detriment of the Company because the option grants to those directors and/or officers were backdated. The statements were also materially false and misleading when made because the NVIDIA Board failed to disclose that the option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the date of grant.

2003 Proxy Statement

110. NVIDIA's 2003 proxy statement was filed with the SEC, and contemporaneously disseminated to shareholders from California, on or about May 20, 2003. Defendants Coxe, Gaither, Huang, Jones, Miller, Seawell and Stevens were directors at this time.

111. According to the 2003 proxy, the Compensation Committee makes recommendations, which then must be approved by the full NVIDIA Board of Directors, concerning salaries and incentive compensation and stock option awards to executives and key employees.

The Compensation Committee oversees NVIDIA's salary, incentive compensation and stock option programs for all employees and performs such other functions regarding compensation as the Board may delegate. . . . *The Compensation Committee reviews and approves individual salary, bonus and stock option awards for the Chief Executive Officer and each member of the executive staff.* . . . It met four times during fiscal year 2003 and acted by written consent two times.

112. Similarly, according to the 2003 proxy, the Audit Committee reviews the audited financial statements of the Company and recommends to the full NVIDIA Board of Directors that the financial statements be included in NVIDIA's annual SEC reports on Form 10-K.

In accordance with the Audit Committee's charter, the Audit Committee oversees the quality and integrity of NVIDIA's accounting, auditing and financial reporting practices on behalf of NVIDIA's Board of Directors. . . . In fulfilling its oversight responsibilities, the Audit Committee reviewed the audited financial statements included in the Annual Report on Form 10-K with management, including a discussion of the quality, not just the acceptability, of the accounting principles, the reasonableness of significant judgments, and the clarity and completeness of the disclosures in the financial statements.

* * *

During fiscal 2002 and 2003, the Audit Committee met with members of senior management to review the certifications provided by the Chief Executive Officer and Chief Financial Officer under the Sarbanes-Oxley Act of 2002, the rules and regulations of the SEC and the overall certification process. At these meetings, NVIDIA officers reviewed each of the Sarbanes-Oxley certification requirements concerning internal and disclosure controls and procedures and any fraud, whether or not material, involving management or other employees with a significant role in NVIDIA's internal and disclosure controls.

Based on its review of the audited financial statements and the various discussions noted above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in our Annual Report on Form 10-K for the fiscal year ended January 26, 2003 for filing with the SEC.

113. The 2003 proxy contained at least the following materially false and misleading statements about the operation and administration of NVIDIA's 1998 Non-Employee Directors' Stock Option Plan: ***"The exercise price for such options is equal to 100% of the fair market value on the date of grant."***

114. This statement was false and misleading because the options granted to NVIDIA's directors did not carry the fair market value on the date of the grant, but were in fact backdated. They were also false and misleading because they failed to disclose that the Compensation Committee (defendants Coxe, Gaither and Jones) had permitted other NVIDIA executives to backdate option grants to maximize their own profits, at the expense of the Company.

115. The 2003 proxy also contained false and misleading statements about the pricing of option grants to NVIDIA executives during fiscal 2003. In the "Stock Option Grants and Exercises" table on page 15, the 2003 proxy stated:

OPTION GRANTS IN FISCAL 2003

We grant options to our executive officers under our 1998 Equity Incentive Plan, or the 1998 Plan. . . . The exercise price of each option was equal to the closing price of our common stock as reported on the Nasdaq Stock Market for the last market trading day prior to the date of grant.

116. These statements were false and misleading when made because they state that option grants made to defendant Huang and other NVIDIA insiders were made at prices equal to the fair market value of NVIDIA common stock on the date of grant when, in fact, the options granted during fiscal 2003 were backdated.

117. In addition, the NVIDIA Board of Directors, through its Compensation Committee (Coxe, Gaither and Jones), made the following representations regarding the Company's compensation policies and the role played by its stock option plans in aligning the interest of management and shareholders:

Our executive compensation policies and practices are established and administered by the Compensation Committee of the Board of Directors. . . . *The Compensation Committee's determinations regarding compensation of the Chief Executive Officer and other executive officers are reviewed with all the non-employee directors.*

* * *

COMPENSATION PLANS

* * *

Long-Term Incentives. Long-term incentives have been in the form of stock options. We believe that equity-based compensation closely aligns the interests of executive officers with your interests as stockholders by providing an incentive to manage NVIDIA with a focus on long-term strategic objectives set by the Board of Directors relating to growth and stockholder value. *Stock options are granted under the 1998 Equity Incentive Plan. Stock options are granted at not less than fair market value.*

* * *

CHIEF EXECUTIVE OFFICER COMPENSATION

* * *

In fiscal 2004, Mr. Huang was granted an option to acquire 200,000 shares of common stock at an exercise price of \$13.41, which was the fair market value of the common stock as of the date of grant. . . . The fiscal 2003 and 2004 grants are intended to continue to maintain the overall competitiveness of the Mr. Huang's compensation package and strengthen the alignment of Mr. Huang's interests with

1 those of our stockholders during this critical phase of NVIDIA's development by
2 continuing to provide long-term stock incentive compensation.

3 118. These statements were materially false and misleading when made because the
4 NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking
5 compensation to performance and incentivizing employees to devote their maximum efforts to the
6 success of the Company – was significantly undermined to the detriment of the Company because
7 the option grants to those directors and/or officers were backdated. The statements were also
8 materially false and misleading when made because the NVIDIA Board failed to disclose that the
9 option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the
10 date of grant.

11 **2004 Proxy Statement**

12 119. NVIDIA's 2004 proxy statement was filed with the SEC, and contemporaneously
13 disseminated to shareholders from California, on or about July 9, 2004. Defendants Chu, Coxe,
14 Gaither, Huang, Jones, Miller, Seawell and Stevens were directors at this time.

15 120. According to the 2004 proxy, the Audit Committee reviews the audited financial
16 statements of the Company and recommends to the full NVIDIA Board of Directors that the
17 financial statements be included in NVIDIA's annual SEC reports on Form 10-K.

18 The Audit Committee of the Board oversees NVIDIA's corporate accounting
19 and financial reporting process. In fulfilling this responsibility, the Audit
20 Committee:

21 * * *

- 22 • *reviews the financial statements to be included in NVIDIA's Annual Report
23 on Form 10-K*

24 121. Likewise, the Audit Committee's Charter stated:

25 The Audit Committee has an annual agenda that includes reviewing our
26 financial statements, internal controls and audit matters. *The Audit Committee
27 meets each quarter with management and the internal and independent auditors to
28 review our interim financial results before the publication of earnings releases, to
discuss the results of examinations by the internal and independent auditors, and
to discuss various topics and events that may have significant financial impact or
are the subject of discussions between management and the independent auditors.*
During fiscal 2004, the Audit Committee separately met with the internal and
independent auditors, with and without management, to discuss the results of their

1 examinations and their observations and recommendations regarding our internal
2 controls.

3 *During fiscal 2004, the Audit Committee met with members of senior*
4 *management to review the certifications provided by the Chief Executive Officer*
5 *and Chief Financial Officer under the Sarbanes-Oxley Act of 2002, the rules and*
6 *regulations of the SEC and the overall certification process.* At these meetings,
NVIDIA officers reviewed each of the Sarbanes-Oxley certification requirements
concerning internal and disclosure controls and procedures and any fraud, whether or
not material, involving management or other employees with a significant role in
NVIDIA's internal and disclosure controls.

7 *Based on the Audit Committee's review and discussions referred to above,*
8 *the Audit Committee recommended to the NVIDIA's Board of Directors that*
9 *NVIDIA's audited financial statements be included in NVIDIA's Annual Report*
10 *on Form 10-K for the fiscal year ended January 25, 2004 for filing with the SEC.*

11 122. The 2004 proxy contained at least the following materially false and misleading
12 statements about the operation and administration of NVIDIA's 1998 Non-Employee Directors'
13 Stock Option Plan:

14 We automatically grant stock options to our directors who are not employees
15 of NVIDIA or our subsidiaries under the 1998 Non-Employee Directors' Stock
16 Option Plan (the Directors' Plan) and the 1998 Equity Incentive Plan (the 1998 Plan).

17 * * *

18 *General Provisions. The exercise price for such options is equal to 100% of*
19 *the fair market value on the date of grant, as determined by the closing price of our*
20 *common stock on Nasdaq on the day preceding the date of grant.*

21 123. These statements were false and misleading because the options granted to NVIDIA's
22 directors did not carry the fair market value on the date of the grant, but were in fact backdated.
23 They were also false and misleading because they failed to disclose that the Compensation
24 Committee (defendants Coxe, Gaither and Jones) had permitted other NVIDIA executives to
25 backdate option grants to maximize their own profits, at the expense of the Company.

26 124. The 2004 proxy also contained false and misleading statements about the pricing of
27 option grants to NVIDIA executives during fiscal 2004. In the "Stock Option Grant Exercise Table"
28 on page 24, the 2004 proxy stated:

Option Grants in Fiscal 2004

29 We grant options to our executive officers under our 1998 Equity Incentive
30 Plan, or the 1998 Plan. . . . *The exercise price of each option was equal to the*
31 *closing price of our common stock as reported on Nasdaq for the last market-*
32 *trading day prior to the date of grant.*

125. These statements were false and misleading when made because they state that option grants made to defendant Huang and other NVIDIA insiders were made at prices equal to the fair market value of NVIDIA common stock on the date of grant when, in fact, the options granted during fiscal 2004 were backdated.

126. In addition, the NVIDIA Board of Directors, through its Compensation Committee (Coxe, Gaither and Jones), made the following representations regarding the Company's compensation policies and the role played by its stock option plans in aligning the interest of management and shareholders:

Our compensation policies and practices are established and administered by the Compensation Committee of the Board. . . . ***The Compensation Committee's determinations regarding compensation of the Chief Executive Officer are reviewed with all the non-employee directors.***

* * *

Executive Equity Compensation Practices. We continue to provide equity incentives in the form of stock options. ***Stock options for executives are granted under our 1998 Equity Incentive Plan at not less than fair market value.***

* * *

Chief Executive Officer Compensation

* * *

In fiscal 2005, Mr. Huang was granted an option to acquire 200,000 shares of common stock at an exercise price of \$26.24, which was the fair market value of the common stock as of the date of grant. . . . The fiscal 2004 and 2005 grants are intended to continue to maintain the overall competitiveness of Mr. Huang's compensation package by providing long-term incentives and, therefore, vesting on such grants was set to commence in 2007 and 2008, respectively, thereby strengthening the alignment of Mr. Huang's interests with those of our stockholders during this critical phase of NVIDIA's development by continuing to provide long-term stock incentive compensation.

127. These statements were materially false and misleading when made because the NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking compensation to performance and incentivizing employees to devote their maximum efforts to the success of the Company – was significantly undermined to the detriment of the Company because the option grants to those directors and/or officers were backdated. The statements were also materially false and misleading when made because the NVIDIA Board failed to disclose that the

option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the date of grant.

2005 Proxy Statement

128. NVIDIA's 2005 proxy statement was filed with the SEC, and contemporaneously disseminated to shareholders from California, on or about May 31, 2005. Defendants Coxe, Gaither, Huang, Jones, Miller, Perry, Seawell and Stevens were directors at this time.

129. According to the 2005 proxy, the Audit Committee reviews the audited financial statements of the Company and recommends to the full NVIDIA Board of Directors that the financial statements be included in NVIDIA's annual SEC reports on Form 10-K.

The Audit Committee of the Board oversees our corporate accounting and financial reporting process. In fulfilling this responsibility, the Audit Committee:

* * *

- confers with management and our independent registered public accounting firm regarding the effectiveness of internal control over financial reporting;

* * *

- reviews the financial statements to be included in our annual report; . . .

130. Likewise, the Audit Committee's Charter stated:

During the course of fiscal 2005, management completed the documentation, testing and evaluation of the Company's system of internal control over financial reporting as a result of the requirements set forth in Section 404 of the Sarbanes-Oxley Act and related regulations. *The Audit Committee was kept apprised of the progress of the evaluation and provided oversight and advice to management during the process.* In connection with this oversight, the Audit Committee received periodic updates at its meetings. Once the documentation, testing and evaluation were completed, *the Audit Committee reviewed and discussed with management its assessment and report on the effectiveness of the Company's internal control over financial reporting as of January 30, 2005.* During fiscal 2005, the Audit Committee met separately with members of the Company's Internal Audit department and independent registered public accounting firm, with and without management, to discuss the results of their examinations and their observations and recommendations regarding the Company's internal control over financial reporting. . . .

Based on the Audit Committee's review and discussions referred to above, the Audit Committee recommended to the Board that the audited consolidated financial statements be included in the annual report for fiscal 2005.

131. The 2005 proxy contained at least the following materially false and misleading statements about the operation and administration of NVIDIA's 1998 Equity Incentive Plan and 1998 Non-Employee Directors' Stock Option Plan:

Options to purchase shares of our common stock are automatically granted to our non-employee directors under our 1998 Non-Employee Directors' Stock Option Plan, or the Directors' Plan, and our 1998 Equity Incentive Plan, or the 1998 Plan. . . .

. . . Under the Directors' Plan, each non-employee director who is elected or appointed to our Board for the first time is automatically granted an option to purchase 75,000 shares on the date of election or appointment, which vests quarterly over a three-year period *and has an exercise price equal to 100% of the closing price of our common stock as reported by Nasdaq for the last market-trading day prior to the date of grant*. On May 17, 2005, Mr. Perry was automatically granted an option to purchase 75,000 shares of our common stock at an exercise price of \$25.42 per share.

132. These statements were false and misleading because the options granted to NVIDIA's directors did not carry the fair market value on the date of the grant, but were in fact backdated. They were also false and misleading because they failed to disclose that the Compensation Committee (defendants Coxe, Gaither and Jones) had permitted other NVIDIA executives to backdate option grants to maximize their own profits, at the expense of the Company.

133. The 2005 proxy also contained false and misleading statements about the pricing of option grants to NVIDIA executives during fiscal 2005. In the "Stock Option Grant Exercise Table" on page 26, the 2005 proxy stated:

Option Grants in Fiscal 2005

We grant options to purchase shares of our common stock to our named executive officers under our 1998 Equity Incentive Plan, or the 1998 Plan. . . . *The exercise price of each option was equal to the closing price of our common stock as reported by Nasdaq for the last market-trading day prior to the date of grant.*

134. These statements were false and misleading when made because they state that option grants made to defendant Huang and other NVIDIA insiders were made at prices equal to the fair market value of NVIDIA common stock on the date of grant when, in fact, the options granted during fiscal 2005 were backdated.

135. In addition, the NVIDIA Board of Directors, through its Compensation Committee (Coxe, Gaither and Jones), made the following representations regarding the Company's

1 compensation policies and the role played by its stock option plans in aligning the interest of
2 management and shareholders:

3 The Compensation Committee annually evaluates and establishes the compensation
4 policies for the chief executive officer and other members of senior management
5 including the named executive officers. Messrs. Jones (Chairman), Coxe and
6 Gaither, all non-employee directors, comprise the Compensation Committee. *The
7 Compensation Committee reviews its determinations regarding executive
8 compensation with all of the non-employee directors.*

9 * * *

10 **Compensation Plans and Actions**

11 * * *

12 The Committee continues to provide equity incentives to executive officers
13 and senior management in the form of stock options, which are granted under the
14 Company's 1998 Equity Incentive Plan *at not less than the closing price of the
15 Company's common stock as reported on the Nasdaq National Market, or Nasdaq,
16 for the last market-trading day prior to the date of grant.*

17 * * *

18 **Chief Executive Officer Compensation**

19 * * *

20 *During the first quarter of fiscal 2005, the Committee awarded Mr. Huang
21 a performance stock option grant to purchase 200,000 shares of the Company's
22 common stock. The exercise price for the stock option is \$26.24 a share, which
23 was equal to the closing price of the Company's common stock as reported by
24 Nasdaq for the last market-trading day prior to the date of grant. . . . The fiscal
25 2005 grant was intended to continue to maintain the overall competitiveness of Mr.
26 Huang's compensation package by providing long-term incentives and, therefore,
27 vesting on such grant was set to occur only in 2008, thereby strengthening the
28 alignment of Mr. Huang's interests with those of the stockholders.*

136. These statements were materially false and misleading when made because the
NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking
compensation to performance and incentivizing employees to devote their maximum efforts to the
success of the Company – was significantly undermined to the detriment of the Company because
the option grants to those directors and/or officers were backdated. The statements were also
materially false and misleading when made because the NVIDIA Board failed to disclose that the
option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the
date of grant.

2006 Proxy Statement

137. NVIDIA's 2006 proxy statement was filed with the SEC, and contemporaneously disseminated to shareholders from California, on or about May 12, 2006. Defendants Coxe, Gaither, Huang, Jones, Miller, Perry and Seawell were directors at this time.

138. According to the 2006 proxy, the Audit Committee reviews the audited financial statements of the Company and recommends to the full NVIDIA Board of Directors that the financial statements be included in NVIDIA's annual SEC reports on Form 10-K.

In this context, *the Audit Committee reviewed and discussed the audited consolidated financial statements for fiscal 2006 and the Company's internal control over financial reporting with management and PwC.* Specifically, the Audit Committee has discussed with PwC the matters required to be discussed by Statement on Auditing Standards No. 61, as amended, as well as the auditors' independence from management and NVIDIA, including the matters in the written disclosures and the letter from the independent registered public accounting firm received by the Audit Committee in accordance with the requirements of the Independence Standards Board Standard No. 1. The Audit Committee has also considered whether the provision of certain permitted non-audit services by the PwC is compatible with PwC's independence and discussed PwC's independence with PwC.

Based on the Audit Committee's review and discussions, the Audit Committee recommended to the Board of Directors that the audited consolidated financial statements be included in the annual report for fiscal 2006.

139. The 2006 proxy contained false and misleading statements about the pricing of option grants to NVIDIA executives during fiscal 2006. In the "Stock Option Grants and Exercises" table on page 24, the 2006 proxy stated:

STOCK OPTION GRANTS AND EXERCISES

Option Grants in Fiscal 2006

We grant options to purchase shares of our common stock to our named executive officers under our 1998 Equity Incentive Plan, or the 1998 Plan. . . . The following table presents each stock option grant during fiscal 2006 to each of the named executive officers. *The exercise price of each option was equal to the closing price of our common stock as reported by NASDAQ for the last market-trading day prior to the date of grant with the exception of an option to purchase 100,000 shares which was granted to Mr. Huang at a premium of \$2.29 on the date of grant.*

140. These statements were false and misleading when made because they state that option grants made to defendants Huang and other NVIDIA insiders were made at prices equal to the fair

1 market value of NVIDIA common stock on the date of grant when, in fact, the options granted
2 during fiscal 2006 were backdated.

3 141. In addition, the NVIDIA Board of Directors, through its Compensation Committee
4 (Coxe, Gaither and Jones), made the following representations regarding the Company's
5 compensation policies and the role played by its stock option plans in aligning the interest of
6 management and shareholders:

7 The Board of Directors has delegated the power and authority to review,
8 modify and approve compensation policies and practices and to administer the
9 Company's equity plans to the Compensation Committee, or Committee. . . . ***The***
10 ***Committee reviews its determinations regarding executive compensation with all of***
11 ***the non-employee directors. The Board did not reject or modify any of the***
12 ***recommendations of the Committee in fiscal 2006.***

13 * * *

14 Compensation Actions and Compensation Programs

15 * * *

16 ***Equity Compensation.*** Equity compensation, which the Committee considers
17 to be long term compensation, is an integral component of the Company's efforts to
18 attract and retain exceptional executives, senior management and world-class
19 employees. The Committee believes that properly structured equity compensation
20 aligns the long-term interests of stockholders and employees by creating a strong,
21 direct link between employee compensation and stock appreciation as stock options
22 are only valuable to the employee if the value of the Company's common stock
23 increases after the date of grant.

24 * * *

25 ***Grants under the Company's 1998 Equity Incentive Plan are made at the***
26 ***closing price of the Company's common stock as reported on NASDAQ for the last***
27 ***market-trading day prior to the date of grant.***

28 * * *

29 Chief Executive Officer Compensation

30 * * *

31 The Committee also reviewed Mr. Huang's equity compensation and
32 determined that increasing Mr. Huang's long-term incentive was appropriate. ***The***
33 ***Committee awarded Mr. Huang a stock option grant to purchase 300,000 shares of***
34 ***the Company's common stock at an exercise price of \$28.735 a share, which was***
35 ***equal to the closing price of the Company's common stock as reported by***
36 ***NASDAQ for the last market-trading day prior to the date of grant.***

142. These statements were materially false and misleading when made because the NVIDIA Board of Directors failed to disclose that the stated purpose of option grants – *i.e.*, linking compensation to performance and incentivizing employees to devote their maximum efforts to the success of the Company – was significantly undermined to the detriment of the Company because the option grants to those directors and/or officers were backdated. The statements were also materially false and misleading when made because the NVIDIA Board failed to disclose that the option grant to defendant Huang was not at the fair market value of NVIDIA common stock on the date of grant.

False Form 10-K Reports

143. In addition to issuing false proxy statements, defendants also successfully concealed the existence of the stock option backdating scheme by repeatedly making false statements about NVIDIA's stock options and stock option granting practices in its annual reports on Form 10-K. As demonstrated below, while the backdating scheme was thriving at NVIDIA, defendants consistently lied to shareholders by stating that incentive options under NVIDIA's stockholder plans were made at fair market value on the date of grant.

1999 Form 10-K405

144. On or about April 29, 1999, NVIDIA filed its 1999 Report on Form 10-K405 with the SEC. The Form 10-K405 included NVIDIA's financial statements for the period ended January 31, 1999, which were materially false and misleading and presented in violation of GAAP, due to improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's compensation expense was understated and its net income and earnings were overstated.

145. In addition, the 1999 Report on Form 10-K405 made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The Equity Incentive Plan (the "Plan"), as amended and restated on February 17, 1998, provides for the issuance of up to 15,000,000 shares of the Company's common stock to directors, employees and consultants. . . .

Pursuant to the Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning in

1 excess of 10% of the voting power of all classes of stock, 110% of the fair market
2 value on the date of grant.

3 * * *

4 *The Company accounts for the plan using the intrinsic value method. As*
5 *such, compensation expense is recorded if on the date of grant the current fair value*
6 *per share of the underlying stock exceeds the exercise price per share. . . .*

7 Non-Employee Directors' Stock Option Plan

8 In February 1998, the Board adopted the 1998 Non-Employee Directors'
9 Stock Option Plan (the "Directors' Plan") to provide for the automatic grant of
10 options to purchase shares of common stock to directors of the Company who are not
11 employees of or consultants to the Company or an affiliate of the Company (a "Non-
12 Employee Director"). The Compensation Committee administers the Directors'
13 Plan. The aggregate number of shares of common stock that may be issued pursuant
14 to options granted under the Directors' Plan is 300,000 shares.

15 Stock-Based Compensation

16 *As permitted under Statement of Financial Accounting Standards No. 123,*
17 *("SFAS 123"), the Company has elected to follow Accounting Principles Board*
18 *Opinion No. 25 ("APB 25") and related Interpretations in accounting for stock-*
19 *based awards to employees.*

20 146. As detailed above, these statements were knowingly false and misleading when made
21 because defendants made incentive stock option awards to themselves and other top NVIDIA
22 executives at prices that were less than equal to 100% of the fair market value of NVIDIA common
23 stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing
24 statements were false and misleading when made because the Company did not report the excess
25 compensation expense arising from the secret options backdating scheme detailed herein.

26 147. The 1999 Form 10-K405 was signed by defendants Huang, Hoberg, Gaither, Jones,
27 Miller and Seawell, and enabled defendants to conceal the existence of the backdating scheme from
28 shareholders at all times relevant to this action.

29 **2000 Form 10-K405**

30 148. On or about March 13, 2000, NVIDIA filed its 2000 Report on Form 10-K405 with
31 the SEC. The Form 10-K405 included NVIDIA's financial statements for the period ended January
32 30, 2000, which were materially false and misleading and presented in violation of GAAP, due to
33 improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's
34 compensation expense was understated and its net income and earnings were overstated.

149. In addition, the 2000 Report on Form 10-K405 made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The Equity Incentive Plan (the "Plan"), as amended and restated on February 17, 1998, provides for the issuance of up to 15,000,000 shares of the Company's common stock to directors, employees and consultants. . . .

Pursuant to the Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning in excess of 10% of the voting power of all classes of stock, 110% of the fair market value on the date of grant. . . .

* * *

The Company accounts for the plan using the intrinsic value method. As such, compensation expense is recorded if on the date of grant the current fair value per share of the underlying stock exceeds the exercise price per share. . . .

Non-Employee Directors' Stock Option Plan

In February 1998, the Board adopted the 1998 Non-Employee Directors' Stock Option Plan (the "Directors' Plan") to provide for the automatic grant of options to purchase shares of common stock to directors of the Company who are not employees of or consultants to the Company or an affiliate of the Company (a "Non-Employee Director"). The Compensation Committee administers the Directors' Plan. The aggregate number of shares of common stock that may be issued pursuant to options granted under the Directors' Plan is 300,000 shares.

Stock-Based Compensation

As permitted under Statement of Financial Accounting Standards No. 123, ("SFAS 123"), the Company has elected to follow Accounting Principles Board Opinion No. 25 ("APB 25") and related Interpretations in accounting for stock-based awards to employees.

150. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

151. The 2000 Form 10-K405 was signed by defendants Huang, Hoberg, Coxe, Gaither, Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

1 **2001 Form 10-K405**

2 152. On or about April 27, 2001, NVIDIA filed its 2001 Report on Form 10-K405 with the
3 SEC. The Form 10-K405 included NVIDIA's financial statements for the period ended January 28,
4 2001, which were materially false and misleading and presented in violation of GAAP, due to
5 improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's
6 compensation expense was understated and its net income and earnings were overstated.

7 153. In addition, the 2001 Report on Form 10-K405 made the following representations
8 regarding the administration of and accounting for NVIDIA's stock options:

9 1998 Equity Incentive Plan

10 The 1998 Plan provides for the issuance of the Company's common stock to
11 directors, employees and consultants. . . .

12 *Pursuant to the 1998 Plan, the exercise price for incentive stock options is*
13 *at least 100% of the fair market value on the date of grant* or for employees owning
in excess of 10% of the voting power of all classes of stock, 110% of the fair market
value on the date of grant. . . .

14 * * *

15 1998 Non-Employee Directors' Stock Option Plan

16 In February 1998, the Board adopted the 1998 Non-employee Directors'
17 Stock Option Plan (the "Directors Plan") to provide for the automatic grant of
options to purchase shares of the Company's common stock to directors of the
18 Company who are not employees or consultants of the Company or of an affiliate of
the Company. . . .

19 * * *

20 Initial Grants vest monthly over a four-year period and become exercisable
21 on the fourth anniversary of the date of grant. . . . *The exercise price for such*
options is at least 100% of the fair market value on the date of grant. . . .

22 * * *

23 Stock-Based Compensation

24 The Company accounts for the 1998 and 2000 plans using the intrinsic value
25 method. As such, compensation expense is recorded if on the date of grant the
current fair value per share of the underlying stock exceeds the exercise price per
26 share. . . .

27 As permitted under Statement of Financial Accounting Standards No. 123,
("SFAS 123"), the Company has elected to follow Accounting Principles Board
28 Opinion No. 25 ("APB 25") and related Interpretations in accounting for stock-
based awards to employees.

154. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

155. The 2001 Form 10-K405 was signed by defendants Huang, Hoberg, Coxe, Gaither, Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

2002 Form 10-K

156. On or about May 14, 2002, NVIDIA filed its 2002 Report on Form 10-K with the SEC. The Form 10-K included NVIDIA's financial statements for the period ended January 27, 2002, which were materially false and misleading and presented in violation of GAAP, due to improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's compensation expense was understated and its net income and earnings were overstated.

157. In addition, the 2002 Report on Form 10-K made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The 1998 Plan provides for the issuance of the Company's common stock to directors, employees and consultants. . . .

Pursuant to the 1998 Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning in excess of 10% of the voting power of all classes of stock, 110% of the fair market value on the date of grant. . . .

1998 Non-Employee Directors' Stock Option Plan

In February 1998, the Board adopted the 1998 Non-Employee Directors' Stock Option Plan (the "Directors Plan") to provide for the automatic grant of options to purchase shares of the Company's common stock to directors of the Company who are not employees or consultants of the Company or of an affiliate of the Company. . . .

Initial Grants vest monthly over a four-year period and become exercisable on the fourth anniversary of the date of grant. . . . ***The exercise price for such options is at least 100% of the fair market value on the date of grant.*** . . .

* * *

Stock-Based Compensation

The Company accounts for the 1998 Plan and 2000 Plan using the intrinsic value method. As such, compensation expense is recorded if on the date of grant the current fair value per share of the underlying stock exceeds the exercise price per share. . . .

As permitted under Statement of Financial Accounting Standards No. 123, the Company has elected to follow Accounting Principles Board Opinion No. 25 and related Interpretations in accounting for stock-based awards to employees.

158. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

159. The 2002 Form 10-K was signed by defendants Huang, Dotz, Coxe, Gaither, Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

2003 Form 10-K

160. On or about April 25, 2003, NVIDIA filed its 2003 Report on Form 10-K with the SEC. The Form 10-K included NVIDIA's financial statements for the period ended January 26, 2003, which were materially false and misleading and presented in violation of GAAP, due to improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's compensation expense was understated and its net income and earnings were overstated.

161. In addition, the 2003 Report on Form 10-K made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The 1998 Plan provides for the issuance of the Company's common stock to directors, employees and consultants. . . .

Pursuant to the 1998 Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning

1 in excess of 10% of the voting power of all classes of stock, 110% of the fair market
2 value on the date of grant.

3 162. As detailed above, these statements were knowingly false and misleading when made
4 because defendants made incentive stock option awards to themselves and other top NVIDIA
5 executives at prices that were less than equal to 100% of the fair market value of NVIDIA common
6 stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing
7 statements were false and misleading when made because the Company did not report the excess
8 compensation expense arising from the secret options backdating scheme detailed herein.

9 163. The 2003 Form 10-K was signed by defendants Huang, Burkett, Coxe, Gaither,
10 Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the
11 backdating scheme from shareholders at all times relevant to this action.

12 **2004 Form 10-K/A**

13 164. On or about May 20, 2004, NVIDIA filed its 2004 Report on Form 10-K/A with the
14 SEC. The Form 10-K/A included NVIDIA's financial statements for the period ended January 25,
15 2004, which were materially false and misleading and presented in violation of GAAP, due to
16 improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's
17 compensation expense was understated and its net income and earnings were overstated.

18 165. In addition, the 2004 Report on Form 10-K/A made the following representations
19 regarding the administration of and accounting for NVIDIA's stock options:

20 *2000 Nonstatutory Equity Incentive Plan*

21 * * *

22 *1998 Equity Incentive Plan*

23 The 1998 Plan provides for the issuance of our common stock to directors,
24 employees and consultants. . . .

25 *Pursuant to the 1998 Plan, the exercise price for incentive stock options is*
26 *at least 100% of the fair market value on the date of grant* or for employees owning
27 in excess of 10% of the voting power of all classes of stock, 110% of the fair market
28 value on the date of grant. . . .

* * *

Stock-Based Compensation

* * *

We use the intrinsic value method, as prescribed by Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, to account for our stock-based employee compensation plans. As such, compensation expense is recorded if on the date of grant the current fair value per share of the underlying stock exceeds the exercise price per share.

166. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

167. The 2004 Form 10-K/A was signed by defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

2005 Form 10-K

168. On or about March 22, 2005, NVIDIA filed its 2005 Report on Form 10-K with the SEC. The Form 10-K included NVIDIA's financial statements for the period ended January 30, 2005, which were materially false and misleading and presented in violation of GAAP, due to improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's compensation expense was understated and its net income and earnings were overstated.

169. In addition, the 2005 Report on Form 10-K made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The 1998 Plan provides for the issuance of our common stock to directors, employees and consultants. . . .

Pursuant to the 1998 Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning in excess of 10% of the voting power of all classes of stock, 110% of the fair market value on the date of grant. . . .

* * *

Stock-Based Compensation

* * *

We use the intrinsic value method, as prescribed by Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, to account for our stock-based employee compensation plans. As such, compensation expense is recorded if on the date of grant the current fair value per share of the underlying stock exceeds the exercise price per share.

170. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

171. The 2005 Form 10-K was signed by defendants Huang, Burkett, Coxe, Chu, Gaither, Jones, Miller, Seawell and Stevens, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

2006 Form 10K

172. On or about March 16, 2006, NVIDIA filed its 2006 Report on Form 10-K with the SEC. The Form 10-K included NVIDIA's financial statements for the period ended January 29, 2006, which were materially false and misleading and presented in violation of GAAP, due to improper accounting for backdated and misdated stock option grants. As a result, NVIDIA's compensation expense was understated and its net income and earnings were overstated.

173. In addition, the 2006 Report on Form 10-K made the following representations regarding the administration of and accounting for NVIDIA's stock options:

1998 Equity Incentive Plan

The 1998 Plan provides for the issuance of our common stock to directors, employees and consultants. . . .

Pursuant to the 1998 Plan, the exercise price for incentive stock options is at least 100% of the fair market value on the date of grant or for employees owning in excess of 10% of the voting power of all classes of stock, 110% of the fair market value on the date of grant.

* * *

Stock-Based Compensation

* * *

We use the intrinsic value method, as prescribed by Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, to account for our stock-based employee compensation plans. As such, compensation expense is recorded if on the date of grant the current fair value per share of the underlying stock exceeds the exercise price per share.

174. As detailed above, these statements were knowingly false and misleading when made because defendants made incentive stock option awards to themselves and other top NVIDIA executives at prices that were less than equal to 100% of the fair market value of NVIDIA common stock on the date of grant, in direct violation of the Company's stock option plans. The foregoing statements were false and misleading when made because the Company did not report the excess compensation expense arising from the secret options backdating scheme detailed herein.

175. The 2006 Form 10-K was signed by defendants Huang, Burkett, Cox, Chu, Gaither, Jones, Perry, Miller and Seawell, and enabled defendants to conceal the existence of the backdating scheme from shareholders at all times relevant to this action.

UNLAWFUL INSIDER SALES

176. Throughout the relevant period, defendants exercised many of these stock options contributing to their ability to sell over \$358.8 million worth of NVIDIA stock they obtained often by cashing in underpriced stock options:

DEFENDANT	DATES OF SALES	SHARES SOLD	PROCEEDS RECEIVED
HUANG	05/23/00-05/22/06	5,304,974	\$99,467,430
SHANNON	03/07/05-05/05/06	231,841	\$6,722,126
PRIEM	12/17/99-03/06/00	600,000	\$3,915,200
STEVENS	08/31/99-02/28/06	2,430,654	\$23,420,278
VIVOLI	06/02/03-01/03/06	475,256	\$6,192,532
FISHER	08/23/99-03/01/06	3,076,600	\$45,029,086
COXE	11/27/01-09/30/05	520,000	\$12,010,000
HOBERG	12/07/99-12/07/01	1,410,430	\$18,887,214
SEAWELL	05/23/00-03/14/06	476,400	\$9,886,040
MALACHOWSKY	08/23/99-06/07/02	5,295,920	\$63,044,325
GAITHER	05/25/99-09/02/05	609,608	\$6,249,704
JONES	03/01/00-03/21/06	1,160,000	\$19,553,364
MILLER	03/03/00-03/30/06	1,679,504	\$31,373,368
TOTAL		23,631,187	\$358,891,867

ENTIRE FAIRNESS APPLIES

177. Because defendants both granted and received unlawfully backdated options, they stood on both sides of the transaction and their misconduct may not be sanctioned unless they bear their burden to demonstrate the entire fairness of the actions, a burden they cannot discharge.

178. Because defendants' misconduct is to be scrutinized under the standard of entire fairness, defendants are not entitled to any presumption that their misconduct was taken in accordance with the proper exercise of business judgment.

179. Because defendants' misconduct was in breach of their duty of loyalty and undertaken in bad faith, their misconduct cannot be shielded by any exculpatory provision in the Company's articles of incorporation that purports to limit defendant's liability for actions that violate their duty of care.

DAMAGE TO NVIDIA

180. The backdating of stock option grants and issuance thereof in the amounts awarded to defendants caused, and continues to cause, substantial harm to NVIDIA. Backdating stock option grants represents a direct and continuing waste of valuable corporate assets. Because NVIDIA is the counterparty to the option contracts, when the defendants exercise their backdated options, money is siphoned on a dollar-for-dollar basis directly from NVIDIA. The result is that the backdated grants give the defendants an option to purchase NVIDIA shares directly from the Company at an unfair and improper low price, with the Company making up the difference.

181. Backdating stock options also severely undermines the incentives that justify the use of stock options. Stock option compensation is intended to encourage management to maximize the return to shareholders by aligning the interests of management with those of shareholders. However, defendants caused themselves and their colleagues to receive stock option grants backdated to correspond to low points in the stock price. The backdating created a perverse incentive for defendants to engineer dips and volatile swings in the stock price. The option backdating also may cause NVIDIA to violate the Internal Revenue Code, since compensation from exercised stock options issued under the backdating scheme was likely nondeductible under Section 162(m).

182. Among other harms suffered and that may be suffered by the Company, backdating stock options has further caused the Company to incur the time and expenses required to investigate defendants' improper backdating scheme; subjects the Company to the possibility of being required to pay back taxes, fines and penalties to the IRS; and subjects the Company to possible damages, fines and penalties that the SEC and/or other governmental agencies may impose, with the possibility of further investigation costs and possible enforcement actions.

TOLLING OF APPLICABLE LIMITATION PERIODS

183. The claims asserted herein are timely. As an initial matter, defendants wrongfully concealed their manipulation of NVIDIA's stock option plans, through a continuous, integrated and systematic stock option backdating scheme, by issuing false and misleading proxy statements, by falsely reassuring NVIDIA's shareholders that NVIDIA's option grants were being administered by a committee of independent directors, and by failing to disclose that backdated options were, in fact, actually issued on dates other than those disclosed, and that strategically-timed option grants were issued based on the manipulation of insider information that ensured the true fair market value of the Company's stock was, in fact, higher than the publicly traded price on the date of the option grant.

184. NVIDIA's shareholders and the investing public had no reason to know of defendants' breach of their fiduciary duties until at least August 2006, when it was announced that NVIDIA had commenced an internal investigation into its historical stock option practices and related accounting. Within weeks of the August 10, 2006 public disclosure of backdating practices at NVIDIA, plaintiffs conducted with the assistance of counsel an investigation of NVIDIA's prior option grants, discovered numerous suspicious grants dated at extremely favorable exercise prices, and expeditiously brought this action. Finally, as fiduciaries of NVIDIA and its shareholders, defendants cannot rely on any limitations defense where they withheld from NVIDIA's shareholders the facts that give rise to the claims asserted herein, *i.e.*, that the option grant dates to defendants had been manipulated to maximize the profit for the grant recipients.

185. Further, plaintiffs' ignorance of defendants' illegal backdating practices was not attributable to a lack of due diligence. It would be unreasonable to expect plaintiffs – typical shareholders – to undertake costly and extensive academic research and statistical analysis when

defendants' false public statements indicated that stock options were being properly granted. In any case, plaintiffs were entitled to rely upon the truthfulness of the disclosures contained within NVIDIA's public statements and SEC filings.

DERIVATIVE ALLEGATIONS

186. Plaintiffs incorporate ¶¶1-185.

187. Demand is excused because here plaintiffs identify specific grants, specific language in NVIDIA's option plans, specific public disclosures in NVIDIA's proxy statements and annual reports on Form 10-K, and supporting empirical analysis to allege knowing and purposeful violations of NVIDIA's shareholder plans and intentional fraudulent public disclosures. Together, these facts provide sufficient particularity in the pleading of futility of demand to satisfy Rule 23.1's pre-suit demand requirement.

188. As a result of the facts set forth herein, plaintiffs have not made any demand on the NVIDIA Board of Directors to institute this action against the defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

189. The Board of Directors currently consists of eight directors: defendants Huang, Chu, Coxe, Gaither, Jones, Miller, Perry and Seawell – all of whom are defendants in this action. Each of these defendants is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute the action for the following reasons, among others:

(a) Huang, Coxe, Gaither, Jones, Miller and Seawell because, among other things, they are directly interested in the improperly backdated stock option grants complained of (*i.e.*, these six current directors each received improperly backdated stock options, including in the option grants represented to have been granted on June 18, 1999 and July 26, 2001), and Huang, Miller, Jones, Coxe and Gaither engaged in illegal insider selling in violation of their duty to abstain or disclose, including the exercise and sale of backdated options;

(b) Coxe, Gaither and Jones, because as members of the Compensation Committee they directly participated in and approved the improper backdating of stock options, as alleged herein, and are substantially likely to be held liable for breaching their fiduciary duties.

1 Indeed as NVIDIA's Compensation Committee Charter notes, one of the Compensation
 2 Committee's principal functions is to administer the Company's stock incentive plans. Moreover, by
 3 colluding with the officer defendants and others, as alleged herein, Coxe, Gaither and Jones have
 4 demonstrated that they are unable or unwilling to act independently of the officer defendants;

5 (c) Miller, Perry and Seawell, because as members of the Audit Committee they
 6 directly participated in and approved the Company's violations of GAAP, as alleged herein, and are
 7 substantially likely to be held liable for breaching their fiduciary duties. Indeed NVIDIA touted in
 8 its SEC filings that directors Miller, Seawell and Perry each qualifies as an "*audit committee*
 9 *financial expert*." Moreover, by colluding with the officer defendants and others, as alleged herein,
 10 Miller, Perry and Seawell have demonstrated that they are unable or unwilling to act independently
 11 of the officer defendants; and

12 (d) All of the current directors, because as directors of the Company they directly
 13 participated in and approved the Company's filing of false financial statements and other SEC
 14 filings, as alleged herein, and are substantially likely to be held liable for breaching their fiduciary
 15 duties. Moreover, by colluding with the officer defendants and others, as alleged herein, all of the
 16 current directors have demonstrated that they are unable or unwilling to act independently of the
 17 officer defendants.

18 190. The Compensation Committee of the Board of Directors is specifically responsible
 19 under its Charter for reviewing and approving grants of stock options and other equity awards to
 20 NVIDIA insiders. This responsibility, although held by the Board, is delegated to the Compensation
 21 Committee. The Compensation Committee is currently comprised of defendants Coxe, Gaither and
 22 Jones. Defendants Coxe and Jones have been members of the Compensation Committee for at least
 23 eight years. Gaither has been a member for at least six years. Thus, all of them served as
 24 Compensation Committee members at the time backdated options were issued. These defendants
 25 were responsible as members of the Compensation Committee to review and approve stock options
 26 granted to NVIDIA insiders during their respective tenures on the Committee. Clearly, these
 27 defendants did not fulfill this duty because they did not act to inform themselves of the
 28 circumstances surrounding these option grants, thereby causing or allowing the Company's insiders

1 to obtain unreasonable and unreported compensation via the backdating of stock option grants.
2 Accordingly, there is a reasonable doubt that defendants Coxe, Gaither and Jones are disinterested
3 because they face a sufficiently substantial likelihood of liability for their breaches of fiduciary duty
4 to NVIDIA. The Compensation Committee's decision to approve the options was not the product of
5 valid business judgment. Thus, for this reason, as well, demand is futile as to Compensation
6 Committee members defendants Coxe, Gaither and Jones.

7 191. The Audit Committee of the Board of Directors is responsible by its Charter for
8 reviewing and discussing: (i) NVIDIA's annual and quarterly financial statements; (ii) the
9 Company's accounting policies and the scope of audits; (iii) the effects of alternative GAAP
10 methods on financial statements; (iv) the Company's internal controls and any material issues
11 regarding them; (v) the Company's policies regarding risk assessment and risk management; and (vi)
12 procedures for receiving, retaining and handling complaints about accounting, internal controls and
13 other auditing matters. These responsibilities, although held by the Board, are delegated to the Audit
14 Committee. The Audit Committee is currently comprised of defendants Miller, Perry and Seawell.
15 Defendants Miller and Seawell have been members of the Audit Committee at least eight years.
16 Thus, these defendants were members of the Audit Committee both when backdated options were
17 granted, and throughout the time when the Company issued materially false and misleading financial
18 statements on account of the improper accounting for the backdated options. Perry has been a
19 member at least one year. These defendants were responsible as members of the Audit Committee
20 for insuring that NVIDIA's internal controls were adequate. NVIDIA's internal controls, however,
21 were deficient as evidenced by its insiders' improper backdating of stock option grants and
22 announced restatement of financial information. As a result of the improper backdating of stock
23 options, the Company's financials were rendered inaccurate because those financials did not account
24 for the true amount of compensation being granted to NVIDIA's insiders. Accordingly, there is a
25 reasonable doubt that defendants Miller, Perry and Seawell are disinterested because they face a
26 sufficiently substantial likelihood of liability for their breaches of fiduciary duties owed to NVIDIA.
27 Thus, for this reason, as well, demand is futile as to Audit Committee member defendants Miller,
28 Perry and Seawell.

1 192. The Nominating and Corporate Governance Committee of the Board of Directors (the
2 “Corporate Governance Committee”) is responsible under its Charter for: (i) recommending director
3 nominees that the Company’s stockholders elect; (ii) recommending nominees for each committee of
4 the Board and for each committee chairmanship; (iii) reviewing, discussing and assessing the
5 performance of the Board and its committees; and (iv) reviewing and discussing corporate-
6 governance guidance and proposed changes to it. These responsibilities, although held by the Board,
7 are delegated to the Corporate Governance Committee. The Corporate Governance Committee is
8 currently composed of defendants Gaither, Coxe, Jones and Chu. Gaither, Coxe and Jones have
9 been members for at least four years. Chu has been a member at least one year. These defendants
10 recommended that defendant Huang remain a NVIDIA director, despite his participation in
11 backdating of stock option grants and his receipt of backdated options. Because keeping Huang on
12 the Board unnecessarily diluted the Board’s ability to objectively examine accounting problems from
13 Huang’s tenure as President and CEO, and heightened Huang’s ability to promote his self-interests
14 in that regard, the Corporate Governance Committee did not exercise reasonable business judgment.
15 The Corporate Governance Committee placed Huang’s interests above those of the Company, and
16 thus the Corporate Governance Committee breached its fiduciary duties. Because the Corporate
17 Governance Committee faces a sufficiently substantial likelihood of liability for its breaches of
18 fiduciary duty, for this reason, as well, demand is futile as to Nominating and Corporate Governance
19 Committee member defendants Gaither, Coxe, Jones and Chu.

20 193. Additionally, because the entire Board of Directors approved the decision to maintain
21 Huang as a director, President and CEO, demand is futile as to all Board members, including Huang,
22 who accepted the Board position knowing of his participation in his backdating, his receipt of
23 backdated options, and the related accounting problems over which he had presided. Thus, for this
24 reason, as well, demand is futile as to defendants Huang, Chu, Coxe, Gaither, Jones, Miller, Perry
25 and Seawell.

26 194. Defendant Huang is liable to NVIDIA for the undeserved compensation that he
27 received as a result of the stock options that he backdated or otherwise manipulated. Huang received
28 4,300,000 options that were dated at or very close to the lowest stock price for the month during

1 which options were granted. Accordingly, on information and belief, plaintiffs allege that Huang
2 engineered, obtained and received backdated stock options and illegal compensation from NVIDIA.
3 Accordingly, there is a reasonable doubt that defendant Huang is disinterested because he faces a
4 sufficiently substantial likelihood of liability in connection with his improperly dated NVIDIA stock
5 options. Defendant Huang also participated in the illegal insider selling (some of which included the
6 selling of stock acquired through the exercising of illegally backdated stock options). Board member
7 defendant Huang sold thousands of his personally held shares for tens of millions of dollars in
8 proceeds while in possession of material, non-public information concerning the illegally
9 undisclosed backdating stock option grant practices. Because Huang received a personal financial
10 benefit from the challenged insider trading transactions, he is interested. Also, Huang faces a
11 sufficiently substantial likelihood of liability for breach of fiduciary duties for insider selling. Since
12 Huang has breached his fiduciary duties and is interested, any demand upon him is futile.

13 195. Defendant Seawell, by his specialized financial expertise, was in a unique position to
14 understand the business of NVIDIA, as well as its finances, markets, and present and future business
15 prospects. Specifically, the Board has determined that Seawell qualifies as an “audit committee
16 financial expert” for the purposes of the SEC. Seawell has a B.A. degree in Economics and an
17 M.B.A. degree in Finance from Stanford University. Further, Seawell served as Senior Vice
18 President and CFO of Synopsys, Inc. from 1991-1997. Due to his extensive financial background,
19 Seawell served as NVIDIA’s interim CFO during the fourth quarter of the 1999 fiscal year. Seawell,
20 because of his unique qualifications, had a heightened duty to ensure the accuracy and fairness of
21 NVIDIA’s financials during at least eight years on the Audit Committee. Nonetheless, defendant
22 Seawell breached his duties by causing or allowing the improper financials described herein. As a
23 result of this defendant’s breach of his duties, any demand upon him is futile.

24 196. Defendant Miller, by his specialized financial expertise, was in a unique position to
25 understand the business of NVIDIA, as well as its finances, markets, and present and future business
26 prospects. Specifically, the Board has determined that Miller qualifies as an “audit committee
27 financial expert” for the purposes of the SEC. Miller has served as CEO and Chairman of the Board
28 of Avid Technology, Inc., and as CEO of Quantum Corporation. Miller, because of his unique

1 qualifications, had a heightened duty to ensure the accuracy and fairness of NVIDIA's reported
2 compensation expenses during at least eight years on the Audit Committee. Nonetheless, defendant
3 Miller breached his duties by causing or allowing the improper financials described herein. As a
4 result of this defendant's breach of his duties, any demand upon him is futile.

5 197. Defendant Perry, by his specialized financial expertise, was in a unique position to
6 understand the business of NVIDIA, as well as its finances, markets, and present and future business
7 prospects. Specifically, the Board has determined that Perry qualifies as an "audit committee
8 financial expert" for the purposes of the SEC. Perry has served as the senior business advisor for
9 Gilead Sciences, Inc., a biopharmaceutical company, reporting to Gilead's CEO. Further, Perry is
10 also a board member of IntraBiotics, and the 2004 IntraBiotics proxy statement stated that Perry was
11 the chair of their audit committee and that the company considered Perry an "audit committee
12 financial expert." Perry, because of his unique qualifications, had a heightened duty to ensure the
13 accuracy and fairness of NVIDIA's reported compensation expenses during at least one year on
14 NVIDIA's Audit Committee. Nonetheless, defendant Perry breached his duties by causing or
15 allowing the improper financials described herein. As a result of this defendant's breach of his
16 duties, any demand upon Perry is futile.

17 198. Each of the defendants knew the adverse, non-public information regarding the
18 improper accounting as a result of their access to and review of internal corporate documents,
19 attendance at Board meetings, and conversations and connections with other corporate officers,
20 employees and directors.

21 199. In addition, the principal professional occupation of defendant Huang is his
22 employment with NVIDIA, pursuant to which he received and continues to receive substantial
23 monetary compensations and other benefits.

24 200. Accordingly, defendant Huang lacks independence from defendants Coxe, Gaither
25 and Jones, defendants who are not disinterested and/or independent and who exert influence over
26 defendant Huang's compensation by virtue of their positions as members of the Compensation
27 Committee. The Compensation Committee has the authority to review and approve Huang's base
28

1 salary, bonus and equity compensation. This lack of independence renders defendant Huang
2 incapable of impartially considering a demand to commence and vigorously prosecute this action.

3 201. The entire NVIDIA Board of Directors and senior management participated in the
4 wrongs complained of herein. NVIDIA's directors are not disinterested or independent due to the
5 following: defendants Huang, Coxe, Gaither, Jones, Miller and Seawell served on the NVIDIA
6 Board during the period in which Company executives were improperly backdating their stock
7 option grants. Pursuant to their specific duties as Board members, each was charged with the
8 management of the Company and to conduct its business affairs. Each of the above-referenced
9 defendants breached the fiduciary duties that they owed to NVIDIA and its shareholders in that they
10 failed to prevent and correct the improper stock option backdating practices. Thus, the NVIDIA
11 Board cannot exercise independent objective judgment in deciding whether to bring this action or
12 whether to vigorously prosecute this action because its members are interested personally in the
13 outcome as it is their actions that have subjected NVIDIA to damages in the form of costs that the
14 Company must expend to restate its past financials and to investigate defendants' improprieties.

15 202. Furthermore, demand is excused because the misconduct complained of herein was
16 not, and could not have been, an exercise of good faith business judgment. It was not, and could not
17 be, an exercise of good faith business judgment for defendants to cause NVIDIA to: violate its own
18 stock option plans; issue false financial statements; issue false proxy statements; cause the Company
19 to file false tax returns; subject the Company to owe back taxes and penalties to the IRS; subject the
20 Company to potential federal securities law prosecutions; and pay extra compensation to its officers
21 and directors through the manipulative and concealed scheme asserted herein. And, as stated above,
22 the backdating of options and related acts of false and fraudulent accounting or reporting for tax
23 purposes also have criminal implications.

24 203. Here, where the entire Board of Directors is comprised of experienced executives
25 with years of financial expertise, there is little doubt as to the Board members knowledge of
26 impropriety. The odds of NVIDIA stock price increasing exponentially almost each and every time
27 in the two-week period following stock option grants, and experienced industry veterans failing to
28 recognize the amazing and alarming pattern, are long. A *Wall Street Journal* analysis following

1 options grants made by another company under similar circumstances, suggested that the odds of the
2 fortuitous stock price increase following each grant was extraordinarily remote – around 1 in 300
3 billion, while the odds of winning the multistate Powerball lottery with a \$1 ticket is 1 in 146
4 million.

5 204. Given these odds, it defies reason that the Board members with years of financial
6 experience and training would fail to recognize this pattern year after year in grants not only given to
7 their associates, but to themselves as well. Where illegal conduct occurs over a period of years and
8 the Board is not only is aware of but participates in it for a substantial period of time without taking
9 any action, demand futility is presumed. *See In re Abbott Labs. Derivative S'holders Litig.*, 325 F.3d
10 795, 808 (7th Cir. 2003) (in finding demand excused court noted that given the extensive trail
11 concerning the violations of federal regulations and inferred awareness of the problems the acts
12 supported a reasonable assumption that there was a sustained and systematic failure of the board to
13 exercise oversight in that the directors knew of the violations of law, took no steps in an effort to
14 prevent or remedy the situation, and that failure to take any action for such an inordinate amount of
15 time resulted in substantial corporate losses and establishing a lack of good faith, “**continuing**
16 **violations of federal regulations over a period of six years cannot be minimized**”); *In re Veeco*
17 *Instruments, Inc. Sec. Litig.*, 434 F. Supp. 2d 267, 278 (S.D.N.Y. 2006) (“If true, plaintiffs
18 allegations that the Committee failed to exercise appropriate attention to potentially illegal corporate
19 activities would constitute a breach of loyalty, subjecting [listing several defendants] to a substantial
20 likelihood of liability. Thus, plaintiffs’ allegations raise a reasonable doubt that these director-
21 Committee members were disinterested and capable objectively deciding whether or not to prosecute
22 this litigation on the corporation’s behalf.”).

23 205. In order to bring this suit, all of the directors of NVIDIA would be forced to sue
24 themselves and persons with whom they have extensive personal and business entanglements.
25 Specifically, defendants Coxe and Gaither are Managing Directors of Sutter Hill Ventures, a venture
26 capital investment firm which was an investor in NVIDIA before the Company went public and
27 continues to be an investor of NVIDIA. Because of the relationship involving Sutter Hill Ventures
28 and NVIDIA, and specifically because of Sutter Hill Ventures’ investment in NVIDIA, defendants

1 Coxé and Gaither would not want NVIDIA's stock price to plummet as the result of a protracted
2 investigation and the Company's admission of liability in the alleged backdating scheme. Further,
3 because of their personal and business relationship, defendants Coxé and Gaither lack the
4 independence necessary to impartially consider a demand to commence and vigorously prosecute an
5 action based on the wrongdoing alleged herein. Therefore, demand is futile with respect to
6 defendants Coxé and Gaither.

7 206. Defendant Chu is also beholden to the other directors and NVIDIA management such
8 that he lacks the independence necessary to impartially consider a demand. Defendant Chu is a
9 Professor of Physics and Professor of Molecular and Cellular Biology at the University of California,
10 Berkley (the "University"). NVIDIA has been a prolific corporate contributor to Dr. Chu's
11 employer, the University, which together with other corporate entities donated over \$10.5 million in
12 2004. NVIDIA has also funded research for defendant Chu's fellow Berkley professor and
13 colleague, Dr. Geoffrey Marcy, to the tune of almost \$200,000. Additionally defendant Chu is also a
14 board member, along with fellow defendant James C. Gaither, at the William and Flora Hewlett
15 Foundation. Defendant Chu cannot be reasonably expected to consider demand against his fellow
16 directors given the ties between NVIDIA and his employer and his personal and social ties with
17 defendant Gaither. *See In re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 938 (Del. Ch. 2003)
18 ("To be direct, corporate directors and generally the sort of people deeply enmeshed in social
19 institutions. Such institutions have norms, expectations that, explicitly and implicitly, influence and
20 channel the behavior of those who participate in their operation.").

21
22
23 207. Defendant Seawell likewise cannot impartially consider a demand. In addition to the
24 other reasons stated above, defendant Seawell is a venture partner with New Enterprise Associates
25 ("NEA"), a venture capital investment firm. Among NEA's portfolio companies is Myogen, Inc.
26 Myogen, Inc., was recently acquired in a \$2.5 billion deal with Gilead Sciences, which was
27 announced soon after plaintiffs filed their complaint in the instant action. Defendant Perry is a
28 senior business advisor of Gilead Sciences where he advises senior management and the board of

1 directors on corporate development, marketing, investment relations and strategic initiatives. As
2 such, he would have been a key player in Gilead's acquisition of Myogen, which has greatly
3 benefited NEA, in which defendant Seawell is a partner. Given this acquisition of historic
4 proportions, which benefited NEA, defendant Seawell's employer, defendant Seawell in no way
5 would jeopardize or malign defendant Perry. Given the interconnecting ties between defendants
6 Seawell and Perry, defendant Seawell is unable to properly and independently consider a demand.

7 208. Additionally, defendant Gaither is retired from the law firm of Cooley Godward, LLP
8 ("Cooley"), where he was a Partner from 1971 until 2000 and served as Senior Counsel from 2000 to
9 2003. In 2002, Cooley conducted an independent review, in conjunction with an accounting firm, of
10 certain of NVIDIA's financial transactions. Gaither lacks the independence necessary to impartially
11 consider a demand to prosecute an action based on the wrongdoing alleged herein because such an
12 investigation would likely uncover glaring omissions in Cooley's investigation from 2002, and
13 Cooley's failure to take proper proactive measures at that time. Moreover, Cooley represents many
14 such companies and/or their directors in other stock option backdating litigation. Therefore, for this
15 additional reason, demand is futile with respect to defendant Gaither.

16 209. Defendants Gaither and Perry's relationship also prevent them from being able to
17 independently and impartially consider demand. Like defendant Gaither, defendant Perry was also a
18 Partner in the Cooley law firm, where he worked for many years. In fact, defendant Perry worked
19 alongside defendant Gaither in the firm's San Francisco office where both defendants, as partners in
20 the firm, specialized in corporate and securities law. Given this relationship of working not only for
21 the same firm, but in the same office specializing in the same practice of law, defendants Gaither and
22 Perry cannot act, and would not have acted, impartially if a demand had been presented. As such,
23 demand is futile as to both defendants Gaither and Perry. *See Oracle*, 824 A.2d at 938-39
24 ("[b]eholden . . . can also flow out of 'personal or other relationships' to the interested party").

25 210. Defendant Jones is also a director of Wind River Systems, Inc., which is engaged in
26 an internal review of the company's historical stock option granting practices and related accounting.
27 Jones is one member of a two member special subcommittee of Wind River's audit committee to
28 lead the internal review of its historical stock option grants. Therefore, Jones' reputation and his

1 position as a director at Wind River, where he just joined the board in 2004, would be severely
 2 damaged if there was any hint of impropriety at NVIDIA, where he has been a director since 1993,
 3 given his unique position as a so-called “independent investigator” pertaining to stock options
 4 backdating at Wind River. Therefore, demand upon Jones is futile because Jones lacks the
 5 independence necessary to impartially consider a demand on NVIDIA’s Board of Directors.

6 211. Additionally, and without prejudice to the foregoing, no demand upon the Board of
 7 Directors is required with respect to claims asserted arising from the filing or issuance of misleading
 8 proxy statements by defendants, as more fully discussed herein.

9 **FIRST CAUSE OF ACTION**

10 **Against All Defendants for Breach of Fiduciary Duties**

11 212. Plaintiffs incorporate ¶¶1-211.

12 213. Defendants had a fiduciary duty to refrain from unduly benefiting themselves and
 13 other Company insiders at the expense of the Company.

14 214. More specifically, defendants breached their fiduciary duties by: (a) colluding with
 15 the defendants on the Compensation Committee to backdate stock option grants; (b) colluding with
 16 the defendants on the Audit Committee to violate GAAP and Section 162(m); (c) colluding with the
 17 other defendants to produce and disseminate to NVIDIA shareholders and the market false financial
 18 statements that improperly recorded and accounted for the backdated option grants and concealed the
 19 improper backdating of stock options; and (d) colluding with the other defendants to file false proxy
 20 statements and false Form 4 filings in order to conceal the improper backdating of stock options.

21 215. Defendants’ misconduct was not, and could not have been, an exercise of good faith
 22 business judgment. Rather, it was intended to, and did, unduly benefit defendants at the expense of
 23 the Company.

24 216. The defendants who served on the Compensation Committee (Coxe, Gaither and
 25 Jones) breached their fiduciary duties by: (a) colluding with the officer defendants to backdate stock
 26 option grants; (b) colluding with the defendants who served on the Audit Committee (Miller, Perry
 27 and Seawell) to violate GAAP and Section 162(m); (c) colluding with the other defendants to
 28

1 produce and disseminate to NVIDIA shareholders and the market false financial statements that
 2 improperly recorded and accounted for the backdated option grants and concealed the improper
 3 backdating of stock options; and (d) colluding with the other defendants to file false proxy
 4 statements and false Form 4 filings in order to conceal the improper backdating of stock options.

5 217. These defendants' misconduct was not, and could not have been, an exercise of good
 6 faith business judgment. Rather, it was intended to, and did, unduly benefit the defendants at the
 7 expense of the Company.

8 218. As alleged in detail herein, defendants who served on the Audit Committee breached
 9 their fiduciary duties by: (a) colluding with the other defendants to violate GAAP and Section
 10 162(m); (b) colluding with the other defendants to produce and disseminate to NVIDIA shareholders
 11 and the market false financial statements that improperly recorded and accounted for the backdated
 12 option grants and concealed the improper backdating of stock options; and (c) colluding with the
 13 other defendants to file false proxy statements and false annual reports on Form 10-K in order to
 14 conceal the improper backdating of stock options.

15 219. These defendants' foregoing misconduct was not, and could not have been, an
 16 exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the
 17 NVIDIA's top executives at the expense of the Company.

18 220. As a direct and proximate result of defendants' foregoing breaches of fiduciary duties,
 19 the Company has sustained millions of dollars in damages, including, but not limited to, the
 20 additional compensation expenses and tax liabilities the Company was required to incur and loss of
 21 funds paid to the Company upon exercise of options.

22 **SECOND CAUSE OF ACTION**

23 **(Against All Defendants for Violations of §14(a) of the Exchange Act)**

24 221. Plaintiffs incorporate ¶¶1-211.

25 222. Rule 14a-9, promulgated pursuant to §14(a) of the Exchange Act, provides that no
 26 proxy statement shall contain "any statement which, at the time and in the light of the circumstances
 27 under which it is made, is false or misleading with respect to any material fact, or which omits to
 28

state any material fact necessary in order to make the statements therein not false or misleading.” 17
C.F.R. §240.14a-9(a).

223. NVIDIA’s Definitive Proxy Statements, including the statements issued on May 26,
2000, June 8, 2000, June 25, 2001, May 28, 2002, and May 20, 2003, violated §14(a) and Rule 14a-9
because they omitted material facts, including the fact that certain of the defendants were causing
NVIDIA to engage in an option backdating scheme, a fact of which the defendants were aware and
participated in from at least 1999 and further misrepresented that NVIDIA options were granted to
Company executives and directors at an exercise price equal to the market price of NVIDIA stock on
the date the stock options were granted. Certain of the Proxy Statements were further false and
misleading with respect to their representations concerning the tax implications of the stock option
grants.

224. In the exercise of reasonable care, defendants should have known that the Proxy
Statements were materially false and misleading.

225. The misrepresentations and omissions in the Proxy Statements were material to
shareholders in voting on each Proxy Statement. The Proxy Statements were an essential link in the
accomplishment of the continuation of defendants’ unlawful stock options backdating scheme, as
revelations of the truth would have immediately thwarted a continuation of shareholders’
endorsement of the directors’ positions, the executive officers’ compensation and the Company’s
compensation policies.

226. The Company was damaged as a result of the material misrepresentations and
omissions in the Proxy Statements.

THIRD CAUSE OF ACTION

(Against All Defendants for Breach of Fiduciary Duties Relating to the Filing of False Financial Statements with the SEC)

227. Plaintiffs incorporate ¶¶1-211.

228. Each of the defendants intentionally or recklessly employed devices, schemes, and
artifices to defraud and engaged in acts, practices, and a course of business which operated as a fraud
and deceit upon the Company.

SIXTH CAUSE OF ACTION

(Against All Defendants for Gross Mismanagement)

238. Plaintiffs incorporate ¶¶1-211.

239. Defendants had a duty to the Company and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure control of NVIDIA.

240. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of NVIDIA in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, defendants breached their duties of due care, diligence and candor in the management and administration of the Company's affairs and in the use and preservation of the Company's assets.

241. During the course of the discharge of their duties, defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet defendants caused NVIDIA to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to NVIDIA, thus breaching their duties to the Company. As a result, defendants grossly mismanaged NVIDIA.

242. By reason of the foregoing, the Company has been damaged.

SEVENTH CAUSE OF ACTION

(Against All Defendants for Constructive Fraud)

243. Plaintiffs incorporate ¶¶1-211.

244. As corporate fiduciaries, defendants owed to NVIDIA and its shareholders a duty of candor and full accurate disclosure regarding the true state of NVIDIA's business and assets and their conduct with regard thereto.

245. As a result of the conduct complained of, defendants made, or aided and abetted the making of, numerous misrepresentations to and/or concealed material facts from NVIDIA's shareholders despite their duties to, *inter alia*, disclose the true facts regarding their stewardship of NVIDIA. Thus, they have committed constructive fraud and violated their duty of candor.

246. By reason of the foregoing, the Company has been damaged.

EIGHTH CAUSE OF ACTION

(Against All Defendants for Corporate Waste)

247. Plaintiffs incorporate ¶¶1-211.

248. By failing to properly consider the interests of the Company and its public shareholders, by failing to conduct proper supervision, and by giving away millions of dollars to defendants via the option backdating scheme, defendants have caused NVIDIA to waste valuable corporate assets.

249. As a result of defendants' corporate waste, they are liable to the Company.

NINTH CAUSE OF ACTION

(Against Defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller for Breach of Fiduciary Duties for Insider Selling and Misappropriation of Information)

250. Plaintiffs incorporate ¶¶1-211.

251. At the time of the stock sales set forth herein, defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller knew the information described above, and sold NVIDIA common stock on the basis of such information.

252. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller used for their own benefit when they sold NVIDIA common stock.

253. At the time of their stock sales, defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller knew that the Company's revenues were materially overstated because of the undisclosed stock option and other related compensation expenses. Defendants' sales of NVIDIA common stock while in possession and control of this material adverse, non-public information was a breach of their fiduciary duties of loyalty and good faith.

254. Since the use of the Company's proprietary information for their own gain constitutes a breach of defendant's fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller obtained thereby.

TENTH CAUSE OF ACTION

(Against Defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller for Violation of California Corporations Code §25402)

255. Plaintiffs incorporate ¶¶1-211.

256. At the time that defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller sold their NVIDIA common stock as set forth herein, by reason of their high executive and/or directorship positions with NVIDIA, defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller had access to highly material information regarding the Company, including the information set forth herein regarding the true adverse facts concerning defendants' backdating practices.

257. Further, defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller cashed in their illegally backdated stock options and sold them for millions in proceeds.

258. At the time of such sales, that information was not generally available to the public or the securities markets. Had such information been generally available, it would have significantly reduced the market price of NVIDIA shares at that time.

259. Defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller, and each of them, had actual knowledge of material, adverse, non-public information and thus sold their NVIDIA common stock in California in violation of California Corporations Code §25402.

260. Pursuant to California Corporations Code §25502.5, defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Cox, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller, and each of them, are liable to NVIDIA for damages in an amount up to three times the difference

1 between the price at which NVIDIA common stock would have had at the time of the sale if the
 2 information known to the defendants, and each of them, had been publicly disseminated prior to that
 3 time and a reasonable time had elapsed for the market to absorb the information.

4 **ELEVENTH CAUSE OF ACTION**

5 **(Against Defendants Huang, Coxe, Gaither, Jones, Miller, Perry,**
 6 **Seawell, Stevens and Chu for Violation of California Corporations Code §25403)**

7 261. Plaintiffs incorporate ¶¶1-211.

8 262. These defendants, through their positions on NVIDIA's Board of Directors, possessed
 9 control and influence over defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe,
 10 Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller's sale of NVIDIA common stock in
 11 violation of the California Corporations Code. These defendants are also liable to the same extent as
 12 defendants under California Corporations Code §25403.

13 263. These defendants were aware of defendants' knowledge of the material, adverse, non-
 14 public information and these defendants were aware of defendants Huang, Shannon, Priem, Stevens,
 15 Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller's intent to sell
 16 NVIDIA common stock while in possession of the material, adverse, non-public information.

17 264. These defendants are culpable for defendants Huang, Shannon, Priem, Stevens,
 18 Vivoli, Fischer, Coxe, Hoberg, Seawell, Malachowsky, Gaither, Jones and Miller's underlying
 19 violations of California Corporations Code §25402 because of their knowledge and ability to control
 20 and influence defendants Huang, Shannon, Priem, Stevens, Vivoli, Fischer, Coxe, Hoberg, Seawell,
 21 Malachowsky, Gaither, Jones and Miller and because their involvement in preparing and/or
 22 approving financials that improperly accounted for the Company's compensation expenses related to
 23 grants of stock options to NVIDIA officers, directors and employees.

24 265. Under California Corporations Code §25403, these defendants, and each of them, are
 25 liable to NVIDIA for damages in an amount up to three times the difference between the price at
 26 which NVIDIA common stock would have had sold for at the time of the sale if the information
 27 known to defendants, and each of them, had been publicly disseminated prior to that time and a
 28 reasonable time had elapsed for the market to absorb the information.

TWELFTH CAUSE OF ACTION

**(Against Defendants Huang and Burkett for Disgorgement
under the Sarbanes-Oxley Act of 2002)**

266. Plaintiffs incorporate ¶¶1-211.

267. Section 304 of the Sarbanes-Oxley Act of 2002 provides that if a public company prepared an accounting restatement due to material non-compliance with any financial reporting requirement under federal securities laws, and such non-compliance resulted from misconduct, then the company's CEO and CFO must reimburse the company for certain payments made by the company to those executives. Section 304, entitled "Forfeiture of Certain Bonuses and Profits," provides in full:

(a) **ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.** – If an issuer is required to prepare an accounting restatement due to the material non-compliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for –

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) **COMMISSION EXEMPTION AUTHORITY.** – The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

268. NVIDIA will restate financial statements due to material non-compliance of such statements with federal securities laws reporting requirements. These restatements resulted from "misconduct" within the meaning of Section 304 of the Sarbanes-Oxley Act of 2002. As a result, defendant Huang, as NVIDIA's CEO, and defendant Burkett, as NVIDIA's CFO, are required to reimburse NVIDIA for all bonuses or other incentive-based or equity-based compensation received by them from the Company during the period July 30, 2002 (the date of enactment of the Sarbanes-Oxley Act of 2002) through the present.

269. Further, defendants Huang and Burkett also are liable to NVIDIA for any profits realized from the sales of securities by the Company during the same period of time.

270. Defendants Huang and Burkett are also liable to plaintiffs for reasonable costs and attorneys' fees in the prosecution of this derivative action on behalf of NVIDIA.

THIRTEENTH CAUSE OF ACTION

(Against Defendants Huang, Fisher, Malachowsky, Hoberg, Priem, Coxe, Gaither, Jones, Miller, Seawell and Stevens for Rescission)

271. Plaintiffs incorporate ¶¶1-211.

272. As a result of the acts alleged herein, the stock option contracts between these defendants and NVIDIA entered into during the relevant period were obtained through defendants' breaches of fiduciary duties, unjust enrichment, gross mismanagement, and abuse of control. Further, the backdated stock options were illegal grants and thus invalid because defendants authorized these options in breach of the terms of the publicly-filed contracts regarding the defendants' employment agreements and the Company's stock option plans.

273. All contracts which provide for stock option grants between these defendants and NVIDIA and were entered into during times relevant hereto should, therefore, be rescinded, with all sums paid under such contracts returned to the Company, and all such executory contracts cancelled and declared void.

FOURTEENTH CAUSE OF ACTION

(Against All Defendants for Constructive Trust)

274. Plaintiffs incorporate ¶¶1-211.

275. As a result of the acts alleged herein, defendants authorized the grant of backdated or otherwise manipulated equity-based compensation to themselves and other NVIDIA insiders. In effect, these backdated options and other manipulated equity or incentive based compensation constitutes illegal compensation in violation of NVIDIA's stock option plans and other compensation policies.

276. The Company has a right for the return of this compensation because it was illegally authorized by defendants and paid out of the Company's assets.

277. Defendants and other NVIDIA insiders profited from the illegally backdated options by wrongful acts.

278. Accordingly, plaintiffs seek a declaratory judgment that the illicit stock options, and all proceeds derived from exercise thereof and any assets or other property acquired in connection therewith, are and have been held in constructive trust for the Company's benefit from the true grant date of the manipulated stock options and other equity or incentive based compensation.

FIFTEENTH CAUSE OF ACTION

(Against Defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Perry, Seawell, Stevens and Chu for Violation of §10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder)

279. Plaintiffs incorporate ¶¶1-211.

280. Between at least 1999 and the present, defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Perry, Seawell, Stevens and Chu disseminated or approved financial statements that did not disclose the backdating practices that were occurring at NVIDIA and the resulting effects of those practices on the Company's financial results. Specifically, NVIDIA's financial statements, as identified above, included financial results that did not properly account for stock options that were granted below fair market value as required under GAAP. Defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Perry, Seawell, Stevens and Chu knew or recklessly disregarded the fact that the Company's financial statements were misleading – due to the backdating – in that the financial statements contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

281. At the same time the price of the Company's common stock was inflated due to the improperly accounted for stock options and defendants were selling stock into the market, defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Perry, Seawell, Stevens and Chu were causing NVIDIA to repurchase its own stock on the open market at inflated prices from August 2004 through the present. Thus, defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) employed devices, schemes and artifices to defraud;

1 (b) made untrue statements of material facts of omitted to state material facts
 2 necessary in order to make the statements made, in light of the circumstances under which they were
 3 made, not misleading; or

4 (c) engaged in acts, practices and a course of business that operated as a fraud or
 5 deceit upon NVIDIA and others in connection with their purchases of NVIDIA common stock
 6 during the relevant period.

7 282. As a result of the misconduct by defendants Huang, Burkett, Coxe, Gaither, Jones,
 8 Miller, Perry, Seawell, Stevens and Chu, NVIDIA has and will suffer damages in that it paid
 9 artificially inflated prices for NVIDIA common stock purchased on the open market. NVIDIA
 10 would not have purchased NVIDIA common stock at the prices it paid, had the market previously
 11 been aware that the market price of NVIDIA's stock was artificially and falsely inflated by
 12 defendants' misleading statements. As a direct and proximate result of these defendants' wrongful
 13 conduct, NVIDIA suffered damages in connection with its purchases of NVIDIA common stock. By
 14 reason of such conduct, defendants Huang, Burkett, Coxe, Gaither, Jones, Miller, Perry, Seawell,
 15 Stevens and Chu are liable to the Company pursuant to §10(b) of the 1934 Act and SEC Rule 10b-5
 16 promulgated thereunder.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiffs demand judgment as follows:

19 A. Awarding money damages against all defendants, jointly and severally, for all losses
 20 and damages suffered as a result of the acts and transactions complained of herein, together with pre-
 21 judgment interest, to ensure defendants do not participate therein or benefit thereby;

22 B. Directing all defendants to account for all damages caused by them and all profits and
 23 special benefits and unjust enrichment they have obtained as a result of their unlawful conduct,
 24 including all salaries, bonuses, fees, stock awards, options and common stock sale proceeds, and
 25 imposing a constructive trust thereon;

26 C. Directing NVIDIA to take all necessary actions to reform and improve its corporate
 27 governance and internal control procedures to comply with applicable law, including, but not limited
 28 to, putting forward for a shareholder vote resolutions for amendments to the Company's By-Laws or

Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote adoption of the following Corporate Governance policies:

(a) a proposal requiring that the office of CEO of NVIDIA and Chairman of the NVIDIA Board of Directors be permanently held by separate individuals and that the Chairman of the NVIDIA Board meet rigorous “independent” standards;

(b) a proposal to strengthen the NVIDIA Board’s supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

(c) appropriately test and then strengthen the internal audit and control functions;

(d) rotate independent auditing firms every five years;

(e) control and limit insider stock selling and the terms and timing of stock option grants; and

(f) reform executive compensation;

D. Ordering the imposition of a constructive trust over defendants’ stock options and any proceeds derived therefrom;

E. Awarding punitive damages;

F. Awarding costs and disbursements in this action, including reasonable attorneys’, accountants’, and experts’ fees; and

G. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: February 28, 2007

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
SHAWN A. WILLIAMS
MONIQUE C. WINKLER
AELISH M. BAIG

s/ Shawn A. Williams
SHAWN A. WILLIAMS

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
TRAVIS E. DOWNS III
BENNY C. GOODMAN III
MARY LYNNE CALKINS
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
THOMAS G. WILHELM
9601 Wilshire Blvd., Suite 510
Los Angeles, CA 90210
Telephone: 310/859-3100
310/278-2148 (fax)

I, Shawn A. Williams, am the ECF User whose ID and password are being used to file this Consolidated Verified Shareholders Derivative Complaint. In compliance with General Order 45, X.B., I hereby attest that Stephen R. Bassar have concurred in this filing.

DATED: February 28, 2007

BARRACK, RODOS & BACINE
STEPHEN R. BASSER
JOHN L. HAEUSSLER

s/ Stephen R. Bassar
STEPHEN R. BASSER

402 West Broadway, Suite 850
San Diego, CA 92101
Telephone: 619/230-0800
619/230-1874 (fax)

BARRACK, RODOS & BACINE
DANIEL BACINE
JEFFREY W. GOLAN
CHAD A. CARDER
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Telephone: 215/963-0600
215/963-0838 (fax)

Co-Lead Counsel for Plaintiffs

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VERIFICATION

I, TRAVIS E. DOWNS III, hereby declare as follows:

1. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins, LLP, one of the Lead Counsel for Lead Plaintiffs in the above-entitled action. I have read the foregoing Consolidated Verified Shareholders Derivative Complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because plaintiffs are absent from the County of San Diego where I maintain my office.

Executed this 28th day of February, 2006 at San Diego, California.

s/ Travis E. Downs III
TRAVIS E. DOWNS III

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Shawn A. Williams

SHAWN A. WILLIAMS

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

100 Pine Street, 26th Floor
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

E-mail: swilliams@lerachlaw.com

Mailing Information for a Case 4:06-cv-06110-SBA

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Travis E. Downs, III**
travisd@lerachlaw.com e_file_sd@lerachlaw.com
- **Richard Gallagher**
rgallagher@orrick.com gpackard@orrick.com
- **Christopher T. Heffelfinger**
cheffelfinger@bermanesq.com
- **Joseph C. Kohn**
jkohn@kohnsuift.com
- **Nicole Lavallee**
nlavallee@bermanesq.com
- **Betsy C. Manifold**
manifold@whafh.com
- **Denis Francis Sheils**
dsheils@kohnsuift.com
- **Joseph J. Tabacco, Jr**
jtabacco@bermanesq.com
- **Shawn A. Williams**
shawnw@lerachlaw.com
e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com;aelishb@lerachlaw.com;moniquew@lerachla

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

William E. Hoese
Kohn Swift & Graf PC
One South Broad Street
Suite 2100
Philadelphia, PA 19107